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In the Supreme Court of the United States

OCTOBER TERM, 1975

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

STATE OF ARIZONA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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STATE OF ARIZONA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Environmental Protection Agency, petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit in these cases.

OPINIONS BELOW

The opinions of the Court of Appeals for the Ninth Circuit in *Brown* v. *Environmental Protection Agency* (App. A, *infra*, 1a-37a) and *State of Ari-*

zona v. *Environmental Protection Agency* (App. C, *infra*, 40a-44a) are reported at 521 F.2d 827 and 521 F.2d 825, respectively.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit in *Brown* v. *Environmental Protection Agency* was entered on August 15, 1975 (App. B, *infra*, 38a-39a). By order of November 3, 1975, Mr. Justice Douglas extended the time within which to file a petition for a writ of certiorari to and including December 18, 1975. By order of December 8, 1975, Mr. Justice Rehnquist further extended the time within which to file a petition for a writ of certiorari to and including December 24, 1975. The judgment of the Court of Appeals for the Ninth Circuit in *State of Arizona* v. *Environmental Protection Agency* (App. D, *infra*, 45a-46a) was entered on September 8, 1975. By order of December 1, 1975, Mr. Justice Rehnquist extended the time within which to file a petition for a writ of certiorari to and including December 18, 1975, and by order of December 8, 1975, he further extended that time to and including December 24, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, upon a State's failure to adopt an implementation plan meeting the requirements of the Clean Air Act, the EPA Administrator has authority under the Act to require the State to inspect motor

vehicles to assure that they are properly maintained to control airborne pollutants within the State.

2. Whether, if the EPA Administrator has such statutory authority, the Clean Air Act is in this respect a valid exercise of Congress' power under the Commerce Clause of the Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

The pertinent provisions and regulations are set forth in Appendix E, *infra*, 47a-71a.

STATEMENT

A.

The Statutory Scheme

The Clean Air Act, 81 Stat. 485, as amended, 42 U.S.C. 1857 *et seq.* (the Act), requires the reduction of pollutants in the ambient air in order "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 101(b)(1).[1] In concluding that it was necessary to attain this objective, Congress found that (Section 101(a)(2))—

> the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers

[1] For the purpose of clarity, Section references to the Act will be used; cross-references to the United States Code citations appear in the Appendix.

> to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation.

The Administrator of the Environmental Protection Agency (EPA) must establish standards governing maximum concentrations of particular pollutants in the air, but the Act gives state and local governments the primary responsibility for promulgating enforceable regulations to establish and implement air quality control programs (Section 101(a)(3)). The Act requires each State to submit to the Administrator plans for "implementation, maintenance, and enforcement" of the national primary and secondary standards [2] for every portion of the State within nine months after the Administrator promulgates those standards. Section 110(a)(1).

These state plans must provide a regulatory scheme for controlling emissions from stationary and

[2] National primary air quality standards are "ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator * * * are requisite to protect the public health." Section 109(b)(1). A national secondary ambient air quality standard is "a level of air quality the attainment and maintenance of which in the judgment of the Administrator * * * is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [each] air pollutant [for which criteria have been established] in the ambient air." Section 109(b)(2). The "public welfare" includes "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Section 302(h).

moving sources of pollution to the extent necessary to attain the national standards within each of the State's air quality control regions (Section 110). The Act expressly defines the primary role of the States, through the mechanism of the implementation plan, in assuring the attainment of the air quality standard (Section 107(a)):

> Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

The required elements of a state implementation plan are set forth in Section 110(a)(2)(A)-(H) of the Act and include: (1) regulations limiting emissions from old and new pollution sources; (2) schedules for compliance with the limitations; (3) provisions for collecting, analyzing and making available emissions data; (4) provisions for such additional methods of pollution control as may be necessary, including land-use and transportation controls; [3] (5) a description of the State's legal authority and resources to implement its plan; (6) a procedure for revision

[3] A transportation control measure is "any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing emissions from individual motor vehicles, or altering existing modal split patterns [patterns of use of various transportation methods] that is directed toward reducing emissions of air pollutants from transportation sources." 40 C.F.R. 51.1(r). See S. Rep. No. 91-1196, 91st Cong., 2d Sess. 12 (1970).

of its plan; (7) provisions for intergovernmental cooperation; and (8) a procedure for inspection and testing of motor vehicles.

On April 30, 1971, the Administrator, acting pursuant to Section 109 of the Act, promulgated national primary and secondary air quality standards for six pollutants. 36 Fed. Reg. 8186. Four of these pollutants—carbon monoxide, photochemical oxidants, nitrogen dioxides and hydrocarbons—result chiefly from motor vehicle emissions, which constitute forty-eight percent of the total of approximately 190 million tons of air pollutants produced in this country annually.[4]

Each State was required to submit its implementation plan to the Administrator for approval no later than January 30, 1972, and he was to act on all plans by May 31, 1972 (Section 110(a)).[5] If the plan

[4] Motor vehicles emit carbon monoxide (CO) directly into the air. Emitted hydrocarbons, however, combine with oxides of nitrogen (NOx) in the presence of sunlight to produce the secondary pollutant, photochemical oxidants (Smog). See Department of Health, Education and Welfare, Nos. AP-63 and AP-64, "Air Quality Criteria for Photochemical Oxidants" and "Air Quality Criteria for Hydrocarbons" (1970); S. Rep. No. 91-1196, 91st Cong., 2d Sess. 25-28 (1970); H.R. Rep. No. 91-1146, 91st Cong., 2d Sess. 6, 11-13 (1970); Committee Print, Serial No. 93-18, A Legislative History of the Clean Air Amendments of 1970, 93d Cong., 2d Sess. (Jan. 1974) ("Leg. Hist."), pp. 381-382 (S. Debate on S. 4358, Sept. 22, 1970, Sen. Montoya); Leg. Hist. 228 (S. Debate on S. 4358, Sept. 21, 1970, Sen Muskie).

[5] On August 14, 1971, the Administrator announced that although transportation controls were required as part of a state plan, a lack of experience and available data made deferral of such controls necessary. Thus submission by the States of separate transportation control plans was deferred until February 15, 1973. 36 Fed. Reg. 15486.

submitted was inadequate to meet the primary ambient air quality standards, the Administrator was required to develop and promulgate an appropriate plan for the State (Section 110(c).[6]

Section 113 of the Act sets forth the manner in which EPA is to enforce the Act's provisions. It provides in part that whenever the Administrator finds that "any person is in violation of any requirement of an applicable implementation plan,"[7] he shall notify the person and the State involved of his finding (Section 113(a)(1)). If the violation is not corrected

[6] Section 110(c)(1) provides in pertinent part:

> The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—
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> * * * * *
>
> (B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, * * *
>
> * * * * *
>
> * * * The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

[7] Section 302(e) defines "person":

> The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

An "applicable implementation plan" includes an implementation plan promulgated by the Administrator under Section 110 (Section 110(d)).

within 30 days, the Administrator "may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action" in the appropriate district court (*ibid.*).[8] In the civil action the court may issue a permanent or temporary injunction against "any person" who violates or fails or refuses to comply with an order or any requirement of an applicable implementation plan (Section 113(b)).[9]

B.

The California and Arizona Transportation Control Plans

1. *California.* On February 21, 1972, the State of California submitted its implementation plan for achieving and maintaining the national ambient air quality standards. 37 Fed. Reg. 10851. As permitted by the Administrator (*supra*, note 5), the plan did not contain transportation control measures. The Administrator found the plan inadequate in several respects (37 Fed. Reg. 10842; 38 Fed. Reg. 2194). While development of a revised plan was being negotiated, the United States Court of Appeals for the District of Columbia Circuit held that the Administrator had improperly permitted postponement of

[8] The order does not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the violation (Section 113(a)(4)).

[9] The Act also provides for "Federally assumed enforcement" of an "applicable implementation plan" whose requirements are being implemented by the State ineffectively (Section 113(a)(2)).

submission of the transportation control portions of state implementation plans beyond the statutory deadline of January 30, 1972. *Natural Resources Defense Council* v. *Environmental Protection Agency*, 475 F.2d 968. The court ordered the Administrator to rescind all previously granted extensions for the submission and implementation of transportation control measures and to require the States to submit appropriate measures by April 15, 1973. The court directed the Administrator to prepare and publish a plan as required by the Act if a State failed to submit such measures. 475 F.2d at 970-971.

On March 20, 1973, the Administrator notified the States of the requirement to submit transportation control measures. 38 Fed. Reg. 7323. The State of California failed to submit adequate measures; accordingly, on June 22, 1973, the Administrator disapproved the measures submitted, and promulgated a substitute transportation control plan for the State of California on November 12, 1973 (38 Fed. Reg. 31232 *et seq.*)[10]

The Administrator's plan included specific requirements applicable to the various California air quality control regions and general requirements applicable throughout the State.[11] One basic requirement

[10] The Administrator granted the State a two-year extension of time to meet the primary standards for photochemical oxidants and carbon monoxide under Section 110(e) of the Act.

[11] These requirements are summarized in the opinion below (App. A, *infra*, 10a-11a); some of them have subsequently been revoked or suspended (App. A, *infra*, 12a).

was that the State "establish an inspection and maintenance program applicable to all light-duty vehicles" operating on state-owned streets and highways (40 C.F.R. 52.242, App. E, *infra*, 70a). The State was required to submit "a detailed compliance schedule showing the steps it will take to establish and enforce" the inspection and maintenance program, including the text of needed statutory proposals or regulations, and a "signed statement from the Governor" identifying the sources and amount of funds for the program (*id.* at 70a-71a).

The State of California did not timely submit an inspection and maintenance program, as required by the EPA plan, and on April 14, 1975, EPA sent the State of California a notice of violation pursuant to Section 113(a)(1) of the Act. The notice cited the State's failure "to submit the compliance schedule or the adopted regulations establishing the inspection and maintenance program" pursuant to the EPA-promulgated implementation plan (App. A, *infra*, 7a). The legislature of California has authorized the Governor to implement a mandatory inspection and maintenance program in the Los Angeles air quality control region, and later to expand the program to other parts of the State. Ann. Cal. Code, Bus. & Prof., Sec. 9889.50 *et seq.* (1973).

2. *Arizona.* The implementation plan submitted by Arizona on January 28, 1972, also omitted transportation control plans. On April 13, 1973, following the decision in *Natural Resources Defense Council*, v. *Environmental Protection Agency, supra*, the State

submitted its transportation control plan. 38 Fed. Reg. 10119. The Administrator concluded that this plan contained an acceptable program for the inspection and maintenance of motor vehicles (38 Fed. Reg. 33369), but he added three provisions to assure compliance with the Act: (1) a management-of-parking-supply regulation, (2) an employee carpool incentive program, and (3) a bus/carpool lane program (40 C.F.R. 52.137-52.139).[12] These provisions required the State to submit schedules showing how it planned to meet the required deadlines for implementing the programs. No such schedules were submitted; instead, the State petitioned the court of appeals for review of the Administrator's action pursuant to Section 307(b)(1) of the Act, 42 U.S.C. 1857h-5(b)(1).

C.

The Decisions Below

1. *Edmund G. Brown, Jr., et al.* v. *Environmental Protection Agency.* Petitions to review the California implementation plan promulgated by EPA were timely filed in the court of appeals by approximately 208 parties pursuant to Section 307(b)(1) of the Act, 42 U.S.C. 1857h-5(b)(1). After preliminary proceedings, the court and the parties determined that the question of the scope of EPA's authority to require compliance by the State was ripe for immediate ad-

[12] EPA subsequently suspended the management-of-parking-supply regulation (40 Fed. Reg. 28064, 29713).

judication. Other constitutional and statutory questions were to be heard at a later date.

The court concluded that the Clean Air Act does not authorize the "imposition of sanctions on a state or its officials for failure to comply with the Administrator's regulations which direct the state to regulate the pollution-creating activities of those other than itself * * *" (App. A, *infra*, 9a). The court reached this conclusion on the basis of Section 113, which it read as distinguishing between "persons" (against whom sanctions for non-compliance with implementation plans could be enforced) and States (App. A, *infra*, 17a-23a); in light of court's view of the structure of the Act; and because "Congress would not have intended to take such a step in the light of the delicacy with which federal-state relations always have been treated by all branches of the Federal government in this obscure manner" (App. A, *infra*, 16a). The court recognized that "our reading of section 113 and our perception of the structure of the Act is not unambiguously supported by the applicable legislative history" (App. A, *infra*, 19a).

Although resting its decision on statutory interpretation, the court discussed the constitutional issues that would be raised by a contrary interpretation. Economic activity by the States that substantially affects interstate commerce is subject to federal regulation under the Commerce Clause, but no case, according to the court of appeals, "holds or even suggests that a state's exercise of its police power with respect to an economic activity which affects interstate commerce is itself an economic activity or 'species of commercial intercourse' subject to regulation by Congress" (App. A, *infra*, 27a). Thus, the federal government cannot force a State to regulate air pollution caused by others. Otherwise, the court suggested, States might be deprived of control over the manner in which their tax revenues are spent and might become simply tools for effectuating federally-prescribed policies (App. A, *infra*, 32a-37a).

2. *State of Arizona* v. *Environmental Protection Agency*. Petitions for review of EPA's revisions of the Arizona Transportation Control Plan were timely filed by six parties, including the State of Arizona. On September 8, relying on its decision in *Brown* v. *Environmental Protection Agency*, *supra*, the court of appeals held that "the Clean Air Act does not authorize the imposition of sanctions against the State of Arizona or its officials for failure to comply with" the EPA amendments to the state implementation plan (App. C, *infra*, 43a).

3. Shortly after the Ninth Circuit decided *Brown* and *Arizona*, the Fourth Circuit faced the issues presented in these cases in *Maryland* v. *Environmental Protection Agency*, No. 74-1007, decided September 19, 1975.[13] Although focusing on Section 110 of the Act, rather than Section 113, the court reached a con-

[13] The Third Circuit had previously held, in *Pennsylvania* v. *Environmental Protection Agency*, 500 F.2d 246, that the Clean Air Act gives the Administrator the authority to compel state compliance with federally-promulgated implementation plans and that the Act is constitutional.

clusion similar to that of the Ninth Circuit. In order to avoid serious constitutional questions, it held that "the EPA was without authority under the statute, as a matter of statutory construction, to require Maryland to establish [transportation control] programs and furnish legal authority for the administration thereof" (slip op. at 41-42).

In *District of Columbia* v. *Train*, 521 F.2d 971, the most recent case to consider these issues, the Court of Appeals for the District of Columbia Circuit took a somewhat different approach. It held that the Administrator has no authority under the Act to require the States to adopt legislation or regulations to establish a transportation control program found necessary by EPA. Thus, if a State fails to submit an acceptable plan, the Administrator must promulgate the regulations to be applied within the State; he cannot compel the State to do so (521 F.2d at 983-986). But, the court held, once such regulations have been promulgated, the Act authorizes the Administrator to require the States to enforce them. The court then faced the constitutional issue avoided by the Ninth and Fourth Circuits and concluded that a State could be required to enforce federal regulations designed to control pollution the State caused directly (*e.g.*, through operation of state owned vehicles) or indirectly (*e.g.*, through allowing use of state roads by vehicles not conforming to federal requirements). But although the federal power extended to requiring the States to prohibit the use of state roads by vehicles that do not comply with

federal standards, it could not constitutionally extend to requiring the State to inspect privately operated vehicles to assure that they are properly equipped and maintained (521 F.2d at 992-994).

REASONS FOR GRANTING THE WRIT

The EPA Administrator's authority to promulgate transportation control plans to be enforced by the States is of basic importance to the effectiveness of the Clean Air Act. The courts of appeals that have considered the extent of that authority have reached widely varying and inconsistent conclusions on both statutory and constitutional grounds. Review by this Court can end the uncertainty and confusion that have resulted.[14] Moreover, the constitutional principles involved here are fundamental to the federal system, and the final resolution of the conflict among the circuits may substantially determine what legislative alternatives are available to Congress in the future.

If the Clean Air Act does not permit the Administrator to promulgate effective plans to control the emission of pollutants by motor vehicles after the States have failed to do so and to require the States to implement and enforce them, then, as a practical matter, the Act may be as ineffectual as previous efforts to persuade the States to improve air quality (See *Train* v. *Natural Resources Defense Council*,

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[14] The Solicitor General has authorized the filing of petitions for writs of certiorari in *Maryland* v. *Environmental Protection Agency, supra*, and *District of Columbia* v. *Train, supra*.

421 U.S. 60, 63-65). This will mean that air pollution associated with our existing transportation systems will remain substantially uncontrolled since comprehensive pollution control programs governing motor vehicles in use are financially and administratively beyond the capability of EPA.

Alternatively, if the Act does provide for federal supervision of state transportation control systems, but the means Congress chose to provide that supervision are unconstitutional, this would not only provoke congressional reconsideration of the Act; it would also indicate that other state administered, federally supervised programs not tied to grants-in-aid are of dubious constitutionality, and that the statutory scheme utilized here must be avoided in future legislation.

As matters now stand, the Administrator faces a dilemma from the conflicting decisions concerning his obligations under the Act. In the Third Circuit, he has the duty to promulgate, when necessary, substitute transportation control plans, including inspection and maintenance programs, requiring the States to adopt and enforce pollution control measures (*Pennsylvania* v. *Environmental Protection Agency*, 500 F.2d 246). In the Ninth and Fourth Circuits, he must himself adopt and enforce the necessary measures (*Brown* v. *Environmental Protection Agency*, *supra*, and *Maryland* v. *Environmental Protection Agency*, *supra*). In the District of Columbia Circuit, he must adopt a detailed substitute state inspection and maintenance program, but may require the States to enforce it in part. (*District of Columbia* v. *Train*, *supra*).

The difficulty of the Administrator's position is highlighted by the fact that the plan at issue in *District of Columbia* v. *Train* includes the entire national capital area. Thus, the Administrator has been instructed by one court of appeals that the Act requires him to develop regulations for enforcement by the States of Maryland and Virginia in the Washington suburban area, while he has been told by another court of appeals with jurisdiction over Maryland and Virginia that he has no authority to require the States to enforce such plans (*Maryland* v. *Environmental Protection Agency*, *supra*). Only this Court can resolve this dilemma.

As to the merits, we believe the court below erred in its interpretation of the Act, misreading the Act's provisions to avoid facing admittedly difficult constitutional issues. The Act contemplates that if a State fails to promulgate an appropriate implementation plan, the Administrator must himself do so.[15] But once substitute measures have been promulgated to control motor vehicle emissions, the State can be compelled to implement them, although this may re-

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[15] EPA does not challenge in this Court the decision of the Court of Appeals for the District of Columbia Circuit that, in the absence of a satisfactory state plan, the Administrator must promulgate a comprehensive substitute plan, and cannot simply direct the State to pass legislation or regulations establishing programs that comply with the Act.

quire appropriation of state funds or even enactment of complementary state legislation.[16]

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[16] The Administrator has described his interpretation of the scope of his authority as follows (38 Fed. Reg. 30626, 30632 (Nov. 6, 1973):

> Many of the measures promulgated herein include requirements that Federal, State or local units of government take specified actions to control air pollution from transportation systems. The Clean Air Act and its legislative history demonstrate that this was the intent of Congress. The approach of leaving primary responsibility for implementation at the State and local level is also made necessary by the nature of air pollution generated by millions of individual vehicles operating on an extensive network of public roads owned and administered by State and local governments.
>
> The specific requirements imposed herein upon States and localities are based largely on two conclusions in addition to the factors discussed above: (1) that the governmental units must abide by valid implementation plan requirements just as much as any other source owners, and (2) that they are the owners and operators of pollution sources through their ownership and operation of highway transportation facilities.
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> * * * * *
>
> Transportation is a necessary service. In our society, the form in which it is provided depends overwhelmingly on the regulatory, taxing, and investment decisions made at all levels of government. By building and maintaining roads and highways, by licensing vehicles and operators, by providing a system of traffic laws, and in many other ways, government has encouraged the growth of automobile use to its present levels. There is nothing inevitable about such a choice. Governments could equally well have chosen to discharge their basic function of maintaining a transportation system in ways that would have discouraged the use of single-passenger automobiles, and encouraged the use of mass transit. But often they have not.

While we recognize that this interpretation of the Act raises significant constitutional questions, we do not believe that they can legitimately be avoided. Congress acted on the firm belief that when analyzed in the light of this Court's decisions and the precise scope of the authority granted by the Act, the Constitution permits the allocation of responsibilities Congress has enacted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 1975.

APPENDIX A

(CORRECTED OPINION)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 73-3306

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL., PETITIONERS,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 73-3305

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY & COLLEGES, ETC., PETITIONER,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 73-3307

CALIFORNIA AIR RESOURCES BOARD, ET AL., PETITIONERS,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

On Petition to Review Actions of the Administrator of the Environmental Protection Agency

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OPINION
[August 15, 1975]

Before: WRIGHT, KILKENNY and SNEED, Circuit Judges.

SNEED, Circuit Judge:

This is a proceeding growing out of numerous petitions for review of certain regulations of the Environmental Protection Agency. Petitioners included the Governor of the State of California, Trustees of the California State University and Colleges, the California Air Resources Board, numerous California cities and counties, private business concerns, and others. Certain of these petitioners filed consolidated briefs in which certain constitutional questions were raised. In due course, the Agency moved to expedite the hearing with respect to these constitutional issues. This motion was granted. Those petitioners seeking to present constitutional issues thereafter were directed to appear at a prehearing conference pursuant to Rule 33, FED. R. APP. P., at which the issues sought to be raised were identified and the time to be allowed for oral argument was fixed. At this prehearing conference, the petitioners were informed that this Court contemplated entering a judgment regarding the constitutional issues pursuant to Rule 54(b), FED. R. CIV. P., prior to a hearing on, or disposition of, such other issues as were raised by

the petitioners. Oral argument on the constitutional issues has been heard and our disposition of them is set forth herein. Our jurisdiction to hear these petitions is based on Section 307(b) of the Clean Air Act.[1]

I.

The Background of This Proceeding

The controversy between the petitioners and the Administrator has its roots in the Clean Air Amendments of 1970.[2] Under these Amendments, California was required to submit for the approval of the Administrator a state plan providing for the implementation, maintenance, and enforcement of national ambient air quality standards,[3] including, if necessary, land-use and transportation controls.[4] California complied by submitting its plan on February 21,

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[1] 42 U.S.C.A. § 1857h-5(b) (West Supp. 1975). In view of the issuance of a "Notice of Violation" by EPA to the State, which is the initial step in applying sanctions for noncompliance with EPA regulations, and in view of the interrelationship between the enforcement procedures and the substantive regulations contained in the EPA's implementation plan, the constitutional challenges here made are clearly ripe for adjudication. *See* Pennsylvania v. Environmental Protection Agency, 500 F.2d 246, 256 n.17 (3d Cir. 1974); and text pp. 6-7.

[2] Act of Dec. 31, 1970, P.L. 91-604, 84 Stat. 1676, *amending* 42 U.S.C. § 1857 *et seq.* (Supp. V, 1969).

[3] Clean Air Act § 110(a), 42 U.S.C.A. § 1857c-5(a) (West Supp. 1975).

[4] Clean Air Act § 110(a)(2)(B), 42 U.S.C. § 1857c-5(a)(2)(B) (West Supp. 1975).

1972.[5] The Administrator approved this plan in part and disapproved it in part on May 31, 1972.[6] Following a further revision by California and partial approval by the Administrator, there were promulgated rules by the Administrator on September 22, 1972, applicable to certain aspects of air pollution control.[7] These rules, however, did not purport to control photochemical oxidants.

This omission led to *City of Riverside* v. *Ruckelshaus* 4 E.R.C. 1728 (C.D. Cal. 1972), a suit in the District Court for the Central District of California, in which the Administrator was ordered to promulgate regulations to control photochemical oxidants, including all necessary transportation controls and land-use controls, not later than January 15, 1973. The Administrator thereafter issued such regulations but, pursuant to discretion recognized by the court in *City of Riverside*, extended the time within which the national primary standard for photochemical oxidants in California could be attained for two years.[8]

Such extensions were held impermissible under the terms of the Clean Air Act in *National Resources Defense Council, Inc.* v. *Environmental Protection Agency*, 475 F.2d 968 (D.C. Cir. 1973). The court directed the Administrator to inform the states which had not submitted an implementation plan enabling

[5] 37 Fed. Reg. 10851 (1972).

[6] 37 Fed. Reg. 10852 (1972).

[7] 37 Fed. Reg. 19812-15, 19829-35 (1972).

[8] 38 Fed. Reg. 2194, 10851 (1973).

them to meet the primary standard by May 31, 1975 to submit such plans, including but not limited to land-use and transportation controls, not later than April 15, 1973. California failed to submit the required plan and the Administrator disapproved its previous plan because it did not provide for attainment and maintenance of the national standards for photochemical oxidants.[9] Thereafter, the Administrator promulgated a transportation control plan for California[10] which, together with the regulations promulgated pursuant to the mandate of the court in *City of Riverside*, *supra*, covered all of California's Air Quality Control Regions.

After concluding that attainment of the required ambient air quality standard for photochemical oxidants and carbon monoxide must be deferred until 1977 because the necessary technology or other alternatives are not available,[11] the Administrator's plan contemplated among other things, the reduction of gasoline sold within the Los Angeles, San Francisco, Sacramento Valley, San Joaquin Valley and San Diego Regions; the operation by the State of California of an inspection and maintenance program designed to reduce emissions from automobiles; limitations to be imposed by the State on the use of motorcycles; the institution by the State of an oxidizing catalyst retrofit program; control of dry cleaning

[9] 38 Fed. Reg. 16550, 16556, 16564 (1973).

[10] 38 Fed. Reg. 31232, *as corrected*, 38 Fed. Reg. 34124, 35467 (1973); 39 Fed. Reg. 1025, 1848 (1974).

[11] *See* Clean Air Act § 110(e)(1)(A), 42 U.S.C. § 1857c-5(e)(1)(A) (1970).

solvent vapor losses; the imposition of surcharges on parking spaces; the development of a procedure of review and approval of construction or modification of parking facilities; the establishment by the State of a computer-aided carpool matching system; and the fixing by the State of certain preferential bus and carpool lanes.[12] This plan specifically directed the State of California to undertake those tasks assigned to it, to report its compliance to the Agency, and, in the case of the inspection and maintenance program, to report the date by which the State would recommend any needed legislation and to submit "[a] signed statement from the Governor and State Treasurer identifying the sources and amounts of funds for the program" and the "text of needed legislation" if existing legislation does not authorize the funds which the program will require.[13] Other miscellaneous duties were imposed upon the State.[14] The Agency has made clear that it believes it has the legal authority to bring civil actions or seek penalties against the states which fail to comply with its regulations.[15]

At least 208 parties petitioned this Court for a review of these actions within the 30-day period

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[12] 38 Fed. Reg. 31232-55 (1973). The Agency's requirements are codified at 40 C.F.R. §§ 52.220-52.266 (1974).

[13] 40 C.F.R. § 52.242(f). For similar requirements, *see, e.g.*, 40 C.F.R. §§ 52.243(f), 52.244(f), 52.257(c), 52.258(f), 52.259(g) (1974).

[14] *E.g.*, 40 C.F.R. § 52.262 (1974) (status report on "corridor issues").

[15] 38 Fed. Reg. 30632-33 (1973).

allowed by the Clean Air Act.[16] Many of these have been dismissed, but a large number are currently pending. In addition to certain revisions, the Administrator has suspended indefinitely the regulations pertaining to management of parking supply[17] and has withdrawn all parking surcharge regulations.[18] The indefinite suspension of the parking management regulations has enabled us to dismiss without prejudice a number of petitions which were directed to the validity of these regulations.[19]

Nonetheless, the Administrator insists that the remainder of its regulations constitute a valid exercise of its authority and that its directions to the State of California contained therein must be obeyed. In keeping with this view, the Administrator on April 11, 1975, dispatched to California a "Notice of Violation" pursuant to Section 113(a)(1) of the Clean Air Act[20] for failure "to submit the compliance schedule or the adopted regulations establishing the inspection and maintenance program" required by the Administrator's regulations.

The Administrator, however, suggests that a deter-

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[16] Clean Air Act § 307(b), 42 U.S.C.A. 1857h-5(b) (West Supp. 1975). The figure 208 is acknowledged by the Agency in its brief.

[17] 40 Fed. Reg. 29713 (1975).

[18] 39 Fed. Reg. 1848 (1974).

[19] California Business Properties Ass'n v. United States Environmental Protection Agency, No. 73-3268 (9th Cir., ..., 1975).

[20] 42 U.S.C. § 1857c-8(a)(1) (1970).

mination regarding its authority under the Clean Air Act and the Constitution is not ripe at the present time because it has not instituted as yet the procedures necessary to invoke sanctions against the State of California. The sanctions include, the Administrator insists, injunctive relief,[21] imposing a receivership on certain state functions,[22] holding a state official in civil contempt with a substantial daily fine until compliance is secured,[23] and requiring a state to allocate funds from one portion of its budget to another in order to finance the undertakings required by the Agency.[24] The Agency disclaims any authority to seek criminal penalties against state legislators.[25] It also indicates that in the final analysis the fashioning of sanctions is within the discretion of the appropriate court. We do not believe any doctrine of ripeness or exhaustion of administrative remedies should preclude our determination of the issues raised in this proceeding by the State of California and others regarding the authority to impose the regulations with respect to which these petitions for review were filed.

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[21] Clean Air Act § 113(b), 42 U.S.C. 1857c-8(b) (Supp. III, 1973).

[22] *Cf.* Turner v. Goolsby, 255 F. Supp. 724, 730, 733-34 (S.D. Ga. 1966).

[23] Harvest v. Board of Public Instruction, 312 F. Supp. 269, 278 (M.D. Fla. 1970).

[24] Wyatt v. Stickney, 344 F. Supp. 373, 377-78 (M.D. Ala. 1972), *aff'd*, Wyatt v. Aderholt, 503 F.2d 1305, 1316 (5th Cir. 1974).

[25] *Cf.* Gravel v. United States, 408 U.S. 606, 616 (1971).

Such issues must be determined in this proceeding for it is unlikely they could be raised "in a civil or criminal proceeding for enforcement."[26] Moreover, the orderly administration of the Clean Air Act requires that the serious questions to which the parties have addressed themselves be resolved as expeditiously as possible.

The position of the State of California and the other petitioners in this proceeding is simply that the Clean Air Act does not authorize the Administrator to impose sanctions on the state or its officials for failure to comply with the regulations here being reviewed, and that any such attempt based on the Commerce Power would be unconstitutional. While we do not feel it necessary to embrace fully California's position, we do believe that the meaning of the Clean Air Act, insofar as the impositions of sanctions is concerned, is sufficiently ambiguous to permit us to interpret it in a fashion that avoids the constitutional issues. Accordingly, we hold that the Clean Air Act does not authorize the imposition of sanctions on a state or its officials for failure to comply with the Administrator's regulations which direct the state to regulate the pollution-creating activities of those other than itself, its instrumentalities and subdivisions, and the municipalities within its borders. Specifically, we hold that the Clean Air Act does not authorize the imposition of sanctions for any failure of the State of California to comply with the direc-

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[26] *See* Clean Air Act § 307(b)(2), 42 U.S.C. § 1857h-5(b)(2) (1970), and note 1 *supra*.

tions contained in 40 C.F.R. § 52.22(a) (growth plans for maintenance of national standards); 40 C.F.R. § 52.242 (inspection and maintenance program); 40 C.F.R. § 52.243 (motorcycle limitation); 40 C.F.R. § 52.244 (oxidizing catalyst retrofit); 40 C.F.R. § 52.245 (control of oxides of nitrogen, hydrocarbon, and carbon monoxide emissions from in-use vehicles); 40 C.F.R. § 52.257 (computer car-pooling matching); 40 C.F.R. § 52.258 (mass transit priority-exclusive bus use); 40 C.F.R. § 52.259 (ramp metering and preferential bus/carpool lanes); 40 C.F.R. § 52.261 (preferential bus/carpool lanes, San Francisco Bay Area); 40 C.F.R. § 52.263 (priority treatment for buses and carpools, Los Angeles Region); 40 C.F.R. § 52.264 (mass transit priority strategy and planning); 40 C.F.R. § 52.265 (mass transit and transit priority planning); and 40 C.F.R. § 52.266 (mass transit and transit priority planning). It follows that we consider 40 C.F.R. § 52.23 (violations and enforcement) invalid to the extent it is contrary to this holding.

Our holding recognizes that the pollution-creating activities of the State of California, its instrumentalities and subdivisions, and its municipalities, are subject to valid regulations promulgated by the Administrator. We also recognize that the State must avoid impeding any enforcement of valid regulations which the Administrator undertakes. We reject, however, the view that the Clean Air Act authorizes the imposition of sanctions against the State for its failure to administer and enforce a system of regulations

promulgated by the Administrator which are designed to control the pollution-creating activities of the citizens of the State and others subject to its jurisdiction. Tersely put, the Act, as we see it, permits sanctions against a state that pollutes the air, but not against a state that chooses not to govern polluters as the Administrator directs.

In support of this proposition, we shall examine those portions of the Clean Air Act upon which the Administrator relies and demonstrate that the Act does not unambiguously vest him with the powers he here asserts. Thereafter, we shall examine the constitutional difficulties which the Administrator's view encounters and which induce us to reject his interpretation of his powers.[27]

II

Interpretation of the Act

The Clean Air Act as amended[28] is both lengthy

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[27] To support his interpretation, the Administrator relies upon Weinberger v. Bentex Pharmaceutical, Inc., 412 U.S. 645, 653 (1973); Udall v. Tallman, 380 U.S. 1 (1965); Mitchell v. DeMario Jewelry, 361 U.S. 288, 291-92 (1960); Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-48 (1936); South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646 (1st Cir. 1974); Pennsylvania v. Environmental Protection Agency, 500 F.2d 246, 263 (3d Cir. 1974); Powell v. Katzenbach, 359 F.2d 221, 235 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 906 (1966); 5 B.N.A. "Environmental Reporter—Current Developments" 755 (Sept. 20, 1974); and cases cited notes 22-25 *supra*.

[28] 42 U.S.C.A. § 1857 *et seq.* (West Supp. 1975) (Chap. 15B-Air Pollution Control).

and complex. It is divided into four subchapters designated "Air Pollution Prevention and Control," "Motor Vehicle Emission Standards," "General Provisions," and "Noise Pollution." As already indicated, the controversy between the Administrator and the State of California before us grows out of section 110(c)(1) of the Act,[29] which empowers the Administrator to promulgate an implementation plan if the plan submitted by a state is not "in accordance with the requirements of this section." [30] The Administrator contends that having promulgated such a plan the Act empowers him to impose sanctions on the State, or at least on the administrative officials of the State, should it or they fail to administer and enforce the plan. It is clear that the Administrator's regulation, 40 C.F.R. § 52.23, so provides.[31]

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[29] 42 U.S.C.A. § 1857c-5 (West Supp. 1975).

[30] Clean Air Act § 110(c)(1)(B), 42 U.S.C.A. § 1857c-5 (c)(1)(B) (West Supp. 1975).

[31] 40 C.F.R. § 52.23 (1974) provides:

> Failure to comply with any provisions of this part shall render the person or Governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule. [38 Fed. Reg. 30633 (1973).]

The statutory authority for this regulation is by no means apparent. The most likely place in the Act for such authority to be found would seem to be section 113 of the Clean Air Act,[32] which deals with "Federal enforcement procedures." More particularly, this authority should appear in subsection (a)(2) which deals with the situation in which violations of implementation plans "appear to result from a failure of the state in which the plan applies to enforce the plan effectively." [33] It does not unambiguously so appear. The subsection first provides that if the "Administrator finds such failure extends beyond the 30th day after such notice, he shall give public

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[32] 42 U.S.C.A. § 1857c-8 (West Supp. 1975).

[33] Clean Air Act § 113(a)(2), 42 U.S.C. § 1857c-8(a)(2) (1970) provides:

> (2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—
>
> (A) by issuing an order to comply with such requirement, or
>
> (B) by bringing a civil action under subsection (b) of this section.

notice of such finding." Thereafter, it provides that during the period of the state's recalcitrance or neglect, "the Administrator may enforce any requirement of such plan with respect to any person (A) by issuing an order to comply with such requirement, or (B) by bringing a civil action under subsection (b) of this section." The Administrator contends that, inasmuch as the term "person" is defined in subsection 302(e)[34] to include a state, municipality, or political subdivision, subsection 113(a)(2) authorizes a civil action against a recalcitrant state. Moreover, he contends that subsections (b)[35] and

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[34] 42 U.S.C. § 1857h(e) (1970).

[35] Clean Air Act § 113(b), 42 U.S.C.A. § 1857c-8(b) (West Supp. 1975) provides:

> (b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—
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> (1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or
>
> (2) violates any requirements of an applicable implementation plan (a) during any period of Federally assumed enforcement, or (b) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section of a finding that such person is violating such requirement; or
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> (3) violates section 1857c-6(e), 1857c-7(c), or 1857c-10(g) of this title; or
>
> (4) fails or refuses to comply with any requirement of section 1857c-9 of this title.
>
> Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compilance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c)[36] of section 113 which impose sanctions also are applicable to states because of their use of the term "person."

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[36] Clean Air Act § 113(c), 42 U.S.C.A. § 1857c-8(c) (West Supp. 1975) provides:

> (c)(1) Any person who knowingly—
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> (A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section that such person is violating such requirement, or
>
> (B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a) of this section, or
>
> (C) violates section 1857c-6(e), section 1857c-7(c), or section 1857c-10(g) of this title shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.
>
> (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter; shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

We disagree. While we are not prepared to say that under no circumstances should the term "person" be read to include a state when used in connection with a sanction-imposing provision of the Act, we are convinced that section 113(a)(2) is designed to provide the Administrator with power to enforce against polluters provisions of an implementation plan not being enforced by the state. Moreover, we are not convinced that the section is designed to equip the Administrator with power to sanction the non-enforcing state.

Our lack of conviction on this point primarily is grounded in our belief that Congress would not have intended to take such a step in the light of the delicacy with which federal-state relations always have been treated by all branches of the Federal government in this obscure manner. In addition, we should be reluctant to interpret expansively a provision such as subsection 113(a)(2) when by doing so we encounter fundamental constitutional questions. We also find comfort in the fact that in subsection 113(a)(1), as well as within subsection 113(a)(2),[37] the

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[37] Clean Air Act § 113(a)(1), 42 U.S.C. § 1857c-8(a)(1) (1970) provides:

> (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring

term "State" is employed in a manner that distinguishes it from the term "person." That is, in subsection 113(a)(1) the Administrator must notify both the "person" in violation of a plan and the "State" in which the plan being violated applies. In subsection 113(a)(2) when a "State" fails to enforce the plan effectively, the Administrator may enforce it against "any person." Had Congress intended the term "person" in that context to include the "State," the natural language to have employed would have been as follows:

> During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereinafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person [, including the State so failing to enforce the plan effectively]—

The language in brackets is missing from the text of section 113(a)(2) and we decline to read it in by way of the statutory definition of the term "person." The Administrator had no difficulty in making clear his intention to impose sanctions on states not enforcing effectively implementation plans.[38] Congress can be expected to have no less capacity for clarity.

As we see it, subsections 113(a)(1) and (a)(2)

> such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

[38] *See* note 31 *supra*.

are designed to vest the Administrator with power to enforce a state implementation plan should the state fail to do so. This parallels the Administrator's power to promulgate an implementation plan for a state which fails to prepare a suitable plan.[39] A diligent search of the sections of the Clean Air Act fails to reveal a single instance in which Congress explicitly has vested in the Administrator power to compel the states to administer and enforce regulations promulgated by him designed to govern polluters, potential or actual, other than the state, municipality, or political subdivision of the state. Counsel for the Administrator also have been unable to guide us to such a provision. This strengthens our belief that the function of subsections 113(a)(1) and (a)(2) is as we perceive it to be.

Viewed generally, the structure of the Clean Air Act reflects a genuine effort to develop an elaborate form of cooperative federalism in which both the Federal government and the states are assigned vital roles. Techniques such as preemption, total and partial,[40] delegations to the states of federal authority,[41]

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[39] Clean Air Act § 110(c)(1), 42 U.S.C.A. § 1857c-5(c)(1) (West Supp. 1975).

[40] Clean Air Act § 119(f), 42 U.S.C.A. § 1857c-10(f) (West Supp. 1975) (unavailable fuels use requirements); Clean Air Act § 209(a), 42 U.S.C. § 1857f-6a(a) (1970) (new motor vehicle emission standards); Clean Air Act § 211(c)(4)(A), 42 U.S.C. § 1857f-6c(c)(4)(A) (1970) (fuel use controls); Clean Air Act § 233, 42 U.S.C. § 1857f-11 (1970) (aircraft emission standards).

[41] *E.g.*, Clean Air Act § 107(a), 42 U.S.C. § 1857c-2(a) (1970) (responsibility for assuring air quality); Clean Air

and the creation of opportunities for states to participate in the task of controlling air pollution[42] are employed. We find this complex structure incompatible with the view that buried within section 113 is the Congressional intent to make the states departments of the Environmental Protection Agency no less obligated to obey its Administrator's command than are its subordinate officials.

We readily acknowledge that our reading of section 113 and our perception of the structure of the Act is not unambiguously supported by the applicable legislative history. On the other hand, we have found nothing that marks our interpretation as plainly erroneous. An important example of the ambiguity that characterizes the relevant history is the following colloquy between Senator Eagleton of Missouri and Senator Muskie of Maine following the presentation by Senator Muskie of the Conference Report on the Clean Air Amendments of 1970. Senator Eagleton, in commenting on "the significance and the parameters of this noteworthy piece of legislation," said,

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Act § 111(c), 42 U.S.C. § 1857c-6(a) (1970) (power to implement and enforce standards of performance); Clean Air Act § 112(d), 42 U.S.C. § 1857c-7(d) (1970) (power to implement and enforce emission standards for hazardous air pollutants); Clean Air Act § 211(c)(4)(B)-(C), 42 U.S.C. § 1857f-6c(c)(4)(B)-(C) (1970) (power to prescribe and enforce vehicle emission controls).

[42] *E.g.*, Clean Air Act § 210, 42 U.S.C. § 1857f-6b (1970) (grants for developing and maintaining inspection and control programs).

> I think we should also pause to record that this bill also marks a very significant step forward in the continuing development of more responsive and responsible relationships among the Federal Government and the State and local governments of our country . . . . Would the Senator from Maine agree that this bill has very broad significance in the area of Federal-State relations?

Senator Muskie's reply was imprecise:

> Yes. May I say to the Senator that during the deliberations on this bill I have been very much interested in preserving "local option" features . . . . In my judgment, the bill will give State and local authorities sufficient latitude in selecting ways to prevent and control air pollution.

116 Cong. Rec. 42386 (1970).

Another example of this ambiguity is the following excerpt pertaining to section 113 taken from the Senate Report:

> If the Secretary should find a State or local control agency not acting to abate violations of implementation plans or to enforce certification requirements, he would be expected to use the full force of Federal law. Also, the Secretary should apply the penalty provisions of this section to the maximum extent necessary to underwrite the strong public demand for abatement of air pollution and to enforce compliance with the provisions of the Act.
>
> If the Secretary and State and local agencies should fail their responsibility, the public would be guaranteed the right to seek vigorous enforcement action under citizen suit provisions of section 304 [42 U.S.C. § 1857h-2 (1970)].

S. REP. No. 91-1196, 91st Cong., 2d Sess. 20 (1970). While it is possible to read this as the Administrator insists we should, it is far more natural and reasonable to read it as indicating that the Administrator had ample power to enforce an implementation plan when a state has failed to do so.

Supporting this view of the Act is the following comment appearing in the House Report with respect to the House version of what became section 113 of the Act:

> Whenever the Secretary finds that as a result of the failure of a state to enforce the plan applicable to such State, any ambient air quality standard is not met, the Secretary is directed to notify the affected State or States, persons not in compliance with the plan and other interested parties. If the failure of the State to take action extends beyond the 30 days after the Secretary's notification, the Secretary may request the Attorney General to bring suit on behalf of the United States in the appropriate U. S. district court to secure abatement of the pollution.

H. R. REP. No. 91-1146, 91st Cong., 2d Sess. 8 (1970).

While the House version was significantly different from section 113 as enacted, it is by no means clear that section 113 intended to lump ineffectively-enforcing states with polluters and subject each of them to the same far-ranging set of remedies provided by

that section. To so intend indicates an insensitivity to the delicacy of federal-state relations which neither is reflected in other portions of the Act nor is worthy of Congress.

This recital of inconclusive bits of legislative history could be continued; however, we limit it to a few additional examples set forth in the margin.[43]

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[43] Congressman Springer, during presentation of the House Report, said,

> The bill provides . . . that State governments will create plans for the implementation and enforcement of the air standards. In fact a State may declare more stringent standards if it feels necessary. . . . [But i]f a State hangs back and fails to move out, the Federal Government will take over and make rules and regulations amounting to a State plan. Machinery for forcing a plan upon a State is spelled out including penalties of $10,000 a day for failing to act.

116 Cong. Rec. 19206 (1970).

Congressman Vanik, during the same debate, said,

> Further, if a State fails to enforce its plan, the Secretary of Health, Education, and Welfare can notify the State and persons who violate the plan. If, after such notice, the State fails to act within 30 days, the Secretary . . . may request the Attorney General of the United States to bring suit to secure abatement and cessation of the pollution. A court may then assess a fine of up to $10,000 a day for each day during which the polluter fails to take corrective action.

116 Cong. Rec. 19218 (1970).

The Senate Committee on Public Works reported:

> If the Secretary should find that a State or local pollution control agency is not acting to abate violations of implementation plans or to enforce certification requirements,

> he would be expected to use the full force of Federal law. Also, the Secretary should apply the penalty provisions of this section to the maximum extent necessary to underwrite the strong public demand for abatement of air pollution and to enforce compliance with the provisions of this Act.

S. REP. No. 91-1196, 91st Cong., 2d Sess. 20 (1970).

But Senator Muskie, the floor manager of the Senate bill, inserted this summary of provisions into the record:

> Federal enforcement under section 113 leaves the primary responsibility with the States for enforcing requirements under implementation plans. The administrator can issue an abatement order to a polluter or go to court seeking an injunction only after 30 days' notice to an individual polluter, or 30 days after notifying the State that the Federal Government is generally assuming enforcement powers in that State because of a widespread failure of State's enforcement. This gives States 30 days in which to take appropriate action themselves.

116 Cong. Rec. 42385 (1970).

The Senate Report, on the other hand, said this:

> The new section [section 116, State retention of authority] prohibits and provides for the enforcement of any violation by any person, as the term is defined in section 302 of the Act, of any applicable implementation plan, including any emission requirements forming a part of the plan, or any emission standard or standard of performance, or procedural requirement established under the Act.

S. REP. No. 91-1196, 91st Cong., 2d Sess. 57 (1970).

Finally, the House Committee on Interstate and Foreign Commerce reported:

> If at any time the Secretary determines that any person is violating the emission standards or that the State or interstate agency is failing to carry out such plan, the Secretary is directed to notify the agencies as well as the violator and specify the time within which such viola-

Enough has been said to demonstrate why we do not feel compelled by the language of the Act to reach the serious constitutional issues which the Administrator's interpretation raises. Validation of our interpretation, however, requires that we set forth these issues and, by suggesting our evaluation of them, reveal the intensity of our desire to avoid confronting them. To this task we now turn.

III.

Constitutional Issues

The Administrator contends that his interpretation encounters no constitutional barriers. Planting himself on Chief Justice Marshall's expansive definition of the power of Congress to regulate commerce set forth in *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1 (1824), he then points to that Chief Justice's classic statement of the Necessary and Proper Clause: "Let the end be legitimate, let it be within the scope of

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tion must cease. If the violation does not cease within such time, the Secretary may request the Attorney General to bring suit on behalf of the United States in the appropriate U. S. district court to secure abatement of the pollution. The court may enter such judgment as the public interest and the equities of the case may require. Also, the court may assess a penalty of up to $10,000 for each day of violation after the time specified by the Secretary for the cessation of the violation. In determining the amount of such penalty, the court is directed to take into account the efforts of the defendant to abate the pollution involved.

H. REP. No. 91-1146, 91st Cong., 2d Sess. 9-10 (1970).

the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819). On these foundations, the Administrator correctly asserts, were built the decisions in *Wickard* v. *Filburn*, 317 U.S. 111 (1942), *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964), and *Katzenbach* v. *McClung*, 379 U.S. 294 (1964), in which activities, otherwise local in scope and character, which exert a "substantial effect on interstate commerce" were held subject to regulation under the Commerce Power.

The emission of air pollutants without regard to their source, the Administrator asserts, has been found by Congress to exert the requisite effect on interstate commerce. This finding, moreover, cannot be said to be without a "rational basis." Having the power to regulate air pollution, the Administrator continues, Congress, under the Necessary and Proper Clause, has the power to direct that state officials either incorporate in the law of their state or administer and enforce on behalf of the Federal Government those regulations designed to control air pollution which are properly promulgated by the Administrator. The end (abatement of air pollution) is legitimate; it (the power to regulate air emissions) is within the scope of the Constitution; and the means (state administration and enforcement) are appropriate, plainly adapted to the end, which is not pro-

hibited, and consistent with the letter and spirit of the Constitution.

States by reason of their position under the Constitution are not immune from federal regulation under the Commerce Power, continues the Administrator. This has been established, he points out, by *United States* v. *California*, 297 U.S. 175 (1936), *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), *Fry* v. *United States*, —— U.S. —— (1975). It was put in *Maryland* v. *Wirtz*, *supra*, as follows:

> But while the commerce power has limits, valid general regulations of commerce do not cease to be regulations of Commerce because a state is involved. If a state is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons the state too may be forced to conform its activities to federal regulation.

392 U.S. at 196, 197. This regulation includes the power to direct that a state either enact such laws to control air pollution as the Administrator might require, or administer and enforce such regulations as the Administration might properly promulgate. The state, as a builder of roads, maker of traffic laws, licensor of vehicles, is no more immune from this form of coercion, says the Administrator, than is a state-owned railroad exempt from the duty to comply with Federal safety regulations.[44] *See United States* v. *California*, 297 U.S. 175 (1936).

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[44] For an exposition of this view by the Administrator, *see* 38 Fed. Reg. 30632-33 (1973).

The petitioners sharply challenge this reading of the Commerce Power. Their fundamental contention is that the Commerce Power does not extend to requiring a state to undertake such *governmental* tasks as might be assigned to it by Congress, or its proper delegate, with respect to activities which admittedly are within the reach of the Commerce Power. The Constitution's Tenth Amendment and Article IV, Section 4, which obligates the United States to guarantee to every state a Republican Form of Government, precludes such an extension of the Commerce Power, assert the petitioners. Moreover, insofar as the Necessary and Proper Clause is concerned, the petitioners contend that the means, compulsory state administration and enforcement, is inappropriate and inconsistent with the letter and spirit of the Constitution.

We do not view these contentions as frivolous. Moreover, we are certain that neither *Maryland* v. *Wirtz* nor *Fry* v. *United States* passed upon the precise issues raised by the petitioners. These cases establish that the payment of wages by states to certain types of state employees is an economic activity that substantially affects interstate commerce and is thus subject to those regulations imposed by Congress which were then before the Court. Neither of these cases holds or even suggests that a state's exercise of its police power with respect to an economic activity which affects interstate commerce is itself an economic activity or "species of commercial intercourse" subject to regulation by Congress. *See Gib-*

bons v. *Ogden*, 72 U.S. (9 Wheat.) 1, 193 (1824). Nor do we believe that it is proper to equate the operation by a state of a railroad, an *economic activity* indistinguishable from that of private parties, with its *governance* of the use of highways and automobiles, an exercise of its police power with respect to commerce.[45]

The *power of states over commerce* has no more been recognized as *commerce* than has the *power of Congress which is derived from the Commerce*

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[45] We recognize that our views both with regard to the interpretation of the Clean Air Act and the constitutional issues here discussed differ from those expressed in Pennsylvania v. Environmental Protection Agency, 500 F.2d 246 (3d Cir. 1974). With regard to the latter issues, we believe with all deference that the Third Circuit failed to recognize the difference between a state engaging in commerce, as all states must under the Supreme Court's interpretation of the Commerce Power, and a state's regulation of the commerce of others. This failure is reflected in the following passage, at 261:

> This reasoning indicates that the basis for the Court's decision in Maryland v. Wirtz, *supra*, is the principle that the constitutionality of federal regulation of state activities is subject to the same analyses as that of private activities; *viz.* the determinative factor is simply whether they have an impact on interstate commerce. Following this principle, we believe that the Administrator acted within the federal commerce power in requiring the Commonwealth to enforce its transportation plan.

The conclusion is a non sequitur. The principle deduced from *Maryland* v. *Wirtz* far exceeds its holding in our respectful opinion. We cannot believe that a careful craftsman like Mr. Justice Harlan intended in *Maryland* v. *Wirtz* to announce a principle so clearly inconsistent with the history of our federal structure.

Clause. Each find their source in the Constitution. Both are of the same family and genus, although not of the same species. The power of the states must yield to Federal power in order to effectuate Federal supremacy, not because the power of the states is commerce. This distinction between commerce and governmental power to regulate commerce, we suggest, was recognized by Mr. Chief Justice Hughes when he observed, "The subject of federal power is 'commerce' and not all commerce but commerce with foreign nations and among the several states." *Santa Cruz Co.* v. *Labor Board*, 303 U.S. 453, 466 (1937). We also believe that Mr. Justice Harlan recognized this distinction in *Maryland* v. *Wirtz*, *supra* at 196, when he quoted Mr. Chief Justice Hughes' observation to demonstrate that the Commerce Power would not disable the Court from preventing "the utter destruction of the State as a sovereign political entity."

To treat the governance of commerce by the states as within the plenary reach of the Commerce Power would in our opinion represent such an abrupt departure from previous constitutional practice as to make us reluctant to adopt an interpretation of the Clean Air Act which would force us to confront the issue. Such treatment, for example, would authorize Congress to direct the states to regulate any economic activity that affects interstate commerce in any manner Congress sees fit. While such an interpretation might not enable Congress to direct the enactment or enforcement of a federal probate code, there

is sufficient doubt about even that to illumine the breadth of the sweeping claim here being made by the Administrator. To make *governance* indistinguishable from *commerce* for the purposes of the Commerce Power cannot be equated to the "unintrusive" regulation of economic activities of the states upheld by the Supreme Court in *Maryland* v. *Wirtz* and *Fry* v. *United States*. A Commerce Power so expanded would reduce the states to puppets of a ventriloquist Congress. We will not attribute to Congress any such intent unless it is expressly unequivocally. As we have already pointed out, that was not done in the Clean Air Act.

To emphasize our reluctance to embrace the Administrator's interpretation, we wish to underscore that he is not merely insisting that the state's exercise of its police power must not improperly burden interstate commerce. *See Pike* v. *Bruce Church*, 397 U.S. 137 (1970); *Bibb* v. *Navajo Freight Lines Inc.*, 359 U.S. 520 (1959); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945). With this proposition no one differs. Nor is the Administrator merely insisting that in the area of control of air pollution federal law has preempted state law. *See, e.g., Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Campbell* v. *Hussey*, 368 U.S. 297 (1961); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941). The petitioners do not question the right of Congress to exclude states from participating in regulating interstate commerce.

Neither of these doctrines, if applied in a conventional manner, supports the Administrator's position. To provide such support, they must be distorted almost beyond recognition. Preemption must be invoked to eliminate a free exercise of state power, and the doctrine of unconstitutional burdens must be read to proscribe all state activities, *including abandonment to the Federal Government of all regulatory responsibility*, other than obedience to the Administrator's will. We are aware of no such version of these doctrines.

We hasten to point out that our reluctance to accept the Administrator's interpretation of the Act is not an effort at this late date to ignore Chief Justice Marshall's triumph over Mr. Jefferson with regard to the power of the Federal government *vis-a-vis* the states. Our concern, as we believe was Chief Justice Marshall's, is to preserve and protect a strong government of the United States and viable governments of the states. As we see it, our interpretation of the Act is more compatible with these objectives than that of the Administrator.

Our interpretation, moreover, does not deprive the Administrator of power to regulate air pollution in the manner provided by the Act. We merely hold that under the Act a state may decline, without becoming liable to sanctions, to undertake a program of control suggested by the Administrator; a state, however, may not interfere with such regulation of the sources of pollution as the Administrator pursuant to the Act undertakes. Our interpretation is

in no way inconsistent with the recognition that Congress has the power to authorize the Administrator to obtain the consent of a reluctant state by conditioning certain federal expenditures within that state on the granting of such consent. *See Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937). Nor should our constitutional concerns be interpreted as disfavoring a determination by Congress that the states may regulate certain aspects of commerce which have an effect on interstate commerce only in certain specified ways *if a state chooses to regulate that aspect of commerce at all.* We are, however, adopting an interpretation which makes it unnecessary for us to face the issue of whether Congress can prevent a state's withdrawal from the field.

Confrontation with this issue would require us to consider the effect such a power would have on the structure of the United States. Its existence, we suspect, would enable Congress to control ever increasing portions of the states' budgets. The pattern of expenditures by states would increasingly become a Congressional responsibility. The maintenance of tax revenues at the state level would be deterred by the realization of the people of each state that their control of the expenditures of such revenues increasingly was passing from their hands. Their likely responses would be, first, to demand increased federal subventions, whether in the form of revenue-sharing or otherwise, and second, to earmark state tax receipts for purposes over which the state has complete control. Neither response is consistent with either healthy federalism or sound public finance.

This severance of spending from taxing at the state level in our view does suggest that the petitioners are not irresponsible when they strongly suggest that the Republican Form of Government of the states would be seriously impaired. The power of each voter of each state over state expenditures, to the extent not supplied by the Federal government, would be less than his power over state taxation. Voters of other states, acting through their representatives in Congress would dilute the strength of the voters of the states whose revenues would be spent as Congress directs. A structure in which all power on the part of states to spend was vested in Congress while the power and obligation to tax remained with the states would encourage few even casually acquainted with the writings of Montesquieu and the *Federalist* papers to assert that the states enjoyed a Republican Form of Government. Nor could such an assertion be made were all taxation and expenditure responsibility to reside in the Federal Government. The limited severance of spending from taxing which the Administrator's interpretation of the Act and the Constitution would permit, therefore, should not be viewed as unrelated to the Guarantee Clause.

We do not consider our hesitancy to embrace the Administrator's interpretation as being in any way inconsistent with the obligation of the state courts, recognized by Mr. Justice Story in *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816), to enforce and recognize the supremacy of valid federal law as

interpreted by the Supreme Court. As Mr. Justice Story points out, this obligation was understood by Founding Fathers and is imbedded in the Constitution. No such plain command exists in the Constitution to support the Administrator's reading of the Commerce Power. Our constitutional practice has been quite contrary to his reading. In this regard, we find particularly revealing the following words of the late Professor Henry M. Hart, Jr., written as recently as 1954:

> Federal law often says to the states, "Don't do any of these things," leaving outside the scope of its prohibition a wide range of alternative courses of action. But it is illuminating to observe how rarely it says, "Do *this* thing," leaving no choice but to go ahead and do it. The *Federalist* papers bear ample witness to the Framers' awareness of the delicacy, and the difficulties of enforcement, of affirmative mandates from a federal government to the governments of the member states.
>
> The Constitution counts upon the necessary participation of the states in the electoral process not by direct command but by the incentive of not losing the opportunity of participation. In similar fashion Congress now elicits desired affirmative performances from the states by attaching them as conditions to the receipt of federal grants-in-aid. If we search the Constitution for provisions which have the appearance of affirmative requirements, two of the most striking are those which call for the surrender of fugitive slaves and fugitives from jus-

> tice. But the first was disembowelled by the *tour de force* of *Prigg* v. *Pennsylvania*, and the second was flatly held, in *Kentucky* v. *Denison*, to be judicially unenforceable. "And we think it clear," said Chief Justice Taney in the latter case, "that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it." Taney's statement can stand today, if we except from it certain primary duties of state judges and occasional remedial duties of other state officers. Both exceptions, it will be observed, involve enforcement through the orderly and ameliorating forms of the judicial process. In any event, experience with the exceptions does little to bring into question the principle of the rule.
>
> The judges of the state courts are not only sworn to support the Constitution, like other state officers, but are bound also to observance of federal law by the special direction of the supremacy clause. This may on occasion require them, specifically and affirmatively, to enter a particular judgment, as in complying, for example, with the injunction of the full faith and credit clause. State courts ordinarily fulfil such obligations without question. But Congress nevertheless has recognized the possibility of conflict and authorized the Supreme Court, in its discretion, to avoid it by entering judgment itself. The imbroglio of *Martin* v. *Hunter's Lessee* suggests the wisdom of making this alternative available.
>
> Judicial mandates to non-judicial state officers to enforce either primary or remedial duties re-

> quiring the performance of affirmative acts are relatively infrequent. Lower federal courts may *prohibit* state officers, in their individual capacity, from taking action under color of office in violation of law. But an action to compel the performance of an affirmative act would encounter, ordinarily, the bar of the Eleventh Amendment. Whether a writ of mandamus to compel performance of a ministerial duty would be regarded as an action against the state is not altogether clear. But it is significant that a practice of issuing such writs to state officers has never become established.

Hart, *The Relations Between State and Federal Law*, 54 COLUM. L. R. 515-16 (1954) (footnotes omitted).

Finally, we are encouraged by the Supreme Court's footnote 7 in *Fry* v. *United States*. In describing the Tenth Amendment, it was said in the footnote:

> The [Tenth] Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system.

—— U.S. at —— n.7. Moreover, the Supreme Court in *Maryland* v. *Wirtz* observed:

> The Court has ample power to prevent what the appellants purport to fear, "the utter destruction of the State as a sovereign political entity."

392 U.S. at 196.

It is our task, where possible, to avoid a statutory interpretation which would require us to decide whether the extensive control of state expenditures, which the Administrator's view would permit, does

either threaten "the utter destruction of the State as a sovereign political entity," or "impair the States' integrity or their ability to function effectively in a federal system." As we have made abundantly clear, we are sufficiently apprehensive about the ability of states "to function effectively in a federal system" under the Administrator's interpretation to justify our strong preference for an interpretation that puts our concerns at rest. In addition, we reject as a means of allaying our fears the assumption that the prospect of "utter destruction of the State as a sovereign political entity" is confronted only when Congress asserts the power to regulate *all* aspects of state and local government. Only the mischievous would contend that not until then is the issue ripe.

All efforts by the Administrator to impose sanctions on the State of California are stayed to the extent indicated in this opinion. To that extent the petitions for review are granted.

Pursuant to Rule 54(b), FED. R. CIV. P., to the extent that there remain unresolved claims presented by the petitioners, the disposition of the issues set forth herein shall be treated as a final judgment with respect to fewer than all the claims presented by the petitioners and we expressly determine that there is no just reason for delay in entering such final judgment wtih respect to the claims of which this opinion disposes.

PETITIONS FOR REVIEW GRANTED IN PART.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 73-3306, 73-3305, 73-3307

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY & COLLEGES, ETC., PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

CALIFORNIA AIR RESOURCES BOARD, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

JUDGMENT

A petition for review from the United States Environmental Protection Agency.

This cause came on to be heard on the transcript of the record of the United States Environmental Protection Agency and was duly submitted. On consideration whereof IT IS NOW HERE ORDERED AND ADJUDGED by this Court that, pursuant to Rule 54(b), Federal Rules of Civil Procedure, to the extent that there remain unresolved claims presented by the petitioners the disposition of the issues set forth herein shall be treated as a final judgment with respect to fewer than all the claims presented by the petitioners and we expressly determine that there is no just reason for delay in entering such final judgment with respect to the claims of which this opinion disposes.

Petitions for review granted in part.

Filed and entered August 15, 1975.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 73-3577

STATE OF ARIZONA, ET AL., PETITIONERS,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 73-3588

BROADWAY-HALE STORES, INC., ET AL., PETITIONERS,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 74-1001

PROPER ENVIRONMENTAL PLANNING, INC.,
PETITIONER,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 74-1002

SEARS, ROEBUCK AND COMPANY, PETITIONER,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 74-1009

SAFEWAY STORES, INC., PETITIONER,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

No. 74-1013

HOMART DEVELOPMENT CO., PETITIONER,

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT.

OPINION

[September 8, 1975]

On Petition for Review of Orders and Regulations
of the Environmental Protection Agency

Before: ELY, TRASK and SNEED, Circuit Judges.

SNEED, Circuit Jud e:

The Environmental Protection Agency has indefinitely suspended those portions of the Maintenance of National Standards regulation, 40 C.F.R. § 52.22 (1974), which cover parking-related facilities, and the Management of Parking Supply regulation 40 C.F.R. § 52.139 (1974), in its entirety. 40 Fed. Reg. 28064, 29713 (1975). Further, the EPA indicated in oral argument of *Brown* v. *Environmental Protection Agency*, —— F.2d ——- (9th Cir. 1975), that the latter suspension was equivalent to a revocation of the regulation. Therefore, for purposes of filing a new petition for review, lifting the suspension or amending the regulation would be the same as a promulgation of the regulation anew. A statement to similar effect is incorporated by reference in the Supplemental Submission filed by EPA in these cases on July 21, 1975. Under such circumstances, new petitions for review may be filed within 30 days of such promulgation, pursuant to section 307 of the Clean Air Act, 42 U.S.C.A. § 1857h-5 (West Supp. 1975).

In view of these developments, the Court finds that so much of the petitioners' dispute with the EPA as pertained to the Management of Parking Supply regulation, *supra*, or those portions of the Maintenance of National Standards regulation, *supra*, which cover parking-related facilities, is moot, and that any future dispute is not before us. *Thorpe* v. *Housing*

Authority, 393 U.S. 268, 281-84 (1969); *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 148 (1967); *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 239-41 (1937); *Vulcanized Rubber & Plastics Co. v. Federal Trade Comm'n*, 258 F.2d 684 (D.C. Cir. 1958). Accordingly, so much of the petitions of the parties listed above as is concerned with the regulations herein referenced is dismissed without prejudice to the petitioners should the Administrator lift his suspension of 40 C.F.R. § 52.22 or § 52.139 (1974) or promulgate new regulations pertaining to the same general subject matter.

The petition of the State of Arizona also raises issues we dealt with in *Brown* v. *Environmental Protection Agency*, *supra*. We dispose of that portion of the petition as is directed to these issues in the same manner as was done in that case. That is, we hold that the Clean Air Act does not authorize the imposition of sanctions against the State of Arizona or its officials for failure to comply with the directives set forth in 40 C.F.R. §§ 52.22, 52.129, 52.132, 52.133, 52.137, 52.138 and 52.140 (1974). The basis for our decision is the same in all respects as in *Brown* v. *Environmental Protection Agency*, *supra*. Therefore, there exists no reason to repeat them here.

In view of these actions, each of the above-listed parties is directed to inform this Court not later than 21 days following the date of this decision which, if any, of the other issues set forth in their petitions for review they continue to desire this Court

to review. Pursuant to Rule 54(b), FED. R. CIV. P., to the extent that there remain unresolved claims presented by the petitioners, the disposition of the issues set forth herein shall be treated as a final judgment with respect to fewer than all the claims presented by the petitioners and we expressly determine that there is no just reason for delay in entering such final judgment with respect to the claims of which this opinion disposes.

GRANTED IN PART AND DISMISSED WITHOUT PREJUDICE IN PART.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 73-3577, 73-3588, 74-1001, 74-1002,
74-1009 and 74-1013

STATE OF ARIZONA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

BROADWAY-HALE STORES, INC., ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

PROPER ENVIRONMENT PLANNING, INC., PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

SEARS, ROEBUCK AND COMPANY, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

SAFEWAY STORES, INC., PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

HOMART DEVELOPMENT CO., PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

JUDGMENT

A petition for review from the United States Environmental Protection Agency.

This cause came on to be heard on the transcript of the record of the United States Environmental Protection Agency and was duly submitted. On consideration whereof IT IS NOW HERE ORDERED AND ADJUDGED by this Court that, pursuant to Rule 54(b), Federal Rules of Civil Procedure, to the extent that there remain unresolved claims presented by the petitioners the disposition of the issues set forth herein shall be treated as a final judgment with respect to fewer than all the claims presented by the petitioners and we expressly determine that there is no just reason for delay in entering such final judgment with respect to the claim of which this opinion disposes.

Petitions granted in part and dismissed without prejudice in part.

Filed and entered September 8, 1975.

APPENDIX E

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

I. The Constitution of the United States provides in pertinent part:

Article I, Section 8:

> The Congress shall have Power * * *
>
> * * * * *
>
> To regulate Commerce * * * among the several States * * *
>
> * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article VI:

> * * * * *
>
> This Constitution, and the laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land * * *.

Tenth Amendment:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

II. Sections 101, 107, 109, 110, 113 and 302(e) of the Clean Air Act of 1967, 81 Stat. 485, as amended

by the Clean Air Act Amendments of 1970, 84 Stat. 1676, 42 U.S.C. 1857 *et seq.*, as amended by Section 302, 85 Stat. 464 and Section 4 of the Energy Supply and Environmental Coordination Act of 1974, Pub. L. No. 93-319, 88 Stat. 256, provide in relevant part:

Section 101 (42 U.S.C. 1857)

Congressional findings; purposes of subchapter.

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public

health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

Section 107 (42 U.S.C. 1857c-2)

Air quality control regions.

(a) Responsibility of State for air quality; submission of implementation plan.

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

* * * * *

Section 109 (42 U.S.C. 1857c-4)

National primary and secondary ambient air quality standards; promulgation; procedure.

(a)(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard

and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b)(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this sec-

tion shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

Section 110 (42 U.S.C. 1857c-5)

State implementation plans for national primary and secondary ambient air quality standards.

(a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan

implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan for each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and, (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan; (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources; (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as

may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the re-

vision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c)(1) The Administrator shall, after consideration of any State hearing record, promptly prepare

and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than

three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend

until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a

permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State.

(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement

such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision

complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D), of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 307 (a) (relating to subpenas) shall be applicable to any proceeding under this subsection.

* * * * *

Section 113 (42 U.S.C. 1857c-8)

Federal enforcement procedures.

(a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or

he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as 'period of Federally assumed enforcement'), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119 (g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or re-

quirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of

a finding that such person is violating such requirement; or

(3) violates section 111(e), 112(c), or 119(g); or

(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c)(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

(C) violates section 111(e), section 112(c), or section 119(g) shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of viola-

tion, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

* * * * *

Section 302 (42 U.S.C. 1857h)

Definitions.

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

* * * * *

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

* * * * *

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

III. 40 C.F.R. Part 52 provides in pertinent part:

§ 52.23 (as amended Sept. 18, 1974, 39 Fed. Reg. 33512)

Violation and Enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a state implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required

to contain, or if the person or Governmental entity fails to comply with such schedule.

* * * * *

Subpart F—California

* * * * *

§ 52.242 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control-related maintenance and requiring that maintenance be performed.

(2) "Light-duty vehicle" means any gasoline-powered motor vehicle rated at 6,000 pounds GVW or less.

(3) All other terms used in this section that are defined in Appendix N to Part 51 of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (hereinafter referred to as the Regions).

(c) The State of California shall establish an inspection and maintenance program applicable to all light-duty vehicles registered in the Regions that operate on streets or highways over which it has ownership or control. No later than June 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The State may exempt any class or category of vehicles which it finds are rarely

used on public streets and highways (such as classic or antique vehicles). The regulations shall include:

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than one year apart by means of a loaded test.

(2) Provisions for inspection failure criteria consistent with the emission reductions claimed in the plan for the strategy. These emission reductions are 15 percent for hydrocarbons and 12 percent for carbon monoxide. These criteria are estimated to include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against noncomplying individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowedgeable operators to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that, following inspection or maintenance, vehicles are not intentionally readjusted or modified in such a way as would cause them no longer to comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspec-

tion cycle on October 1, 1975, and completing it by September 30, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After September 30, 1976, the State shall not register or allow to operate on its streets or highways and light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After September 30, 1976, no owner of a light-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new vehicle.

(f) The State of California shall submit no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations that it will propose for adoption. The compliance schedule shall also include:

(1) The date by which the State will recommend any needed legislation to the State legislature.

(2) The date by which necessary equipment will be ordered.

(3) A signed statement from the Governor and State Treasurer identifying the sources and amount of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 560970 159

Supreme Court, U. S.
FILED
SEP 29 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

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In the Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-909, 75-960, 75-1050 and 75-1055

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner

—*v.*—

EDMUND G. BROWN, GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.,

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

PETITIONS FOR CERTIORARI FILED DECEMBER 24, 1975, JANUARY 7, 1976 AND JANUARY 26, 1976
CERTIORARI GRANTED JUNE 1, 1976

In the Supreme Court of the United States

OCTOBER TERM, 1976

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ENVIRONMENTAL PROTECTION AGENCY,
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

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UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

ADMIN PETN TO REVIEW

CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION A CORPORATION; CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION, A CORPORATION; CITY OF SAN FRANCISCO CIVIC PLAZA PARKING CORPORATION; AND CITY OF SAN FRANCISCO SOCIAL SERVICES CORPORATION, PETITIONERS

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

DATE	FILINGS-PROCEEDINGS
1973	
Nov. 27	FILED ORIG. & 7 COPIES OF A PETITION TO REVIEW AN ORDER OF THE EPA. $50
1974	
Mar. 11	FILED ORIG. & 3 COPIES OF RESPONDENTS MOTION TO CONSOLIDATE APPEAL WITH 73-3250-59, 73-3261-3307, 73-3309, 73-3315, 73-3317-19, 73-3322, 73-3339-44, 73-3352, 73-3355-57, 73-3359, 73-3366, 72-3368-77, 73-3379, 73-3381-3391, 73-3396-3425, 73-3430-32, 73-3445-52, 73-3479, 73-3428, 73-3453-65, 73-3467-3478, 73-3480-98, 73-3501-08, 73-3510-15, 73-3517-18, 73-3520, 73-3522, 73-3524-28, 73-3530 to "C" (Z)
Apr. 12	Filed order (C & M) consolidating appeal #'s 73-3233; 73-3250-59; 61-99; 73-3300-09; 15; 17-19; 22; 39-44; 52; 55-57; 59; 66; 68-77; 79, 81-91; 96-73-3425; 28; 30-32; 45-65; 67-98; 73-3501-08; 10-15; 17-18; 20; 22; 24-28; 30. Further ordered the certified index to the record previously filed in No. 73-3238 shall be treated as the index to the record in these cases. Respondent will serve each petitioner with a copy of the certified index.

DATE	FILINGS-PROCEEDINGS

1974

Concurrent with filing the record with the clerk of this Court, Respondent will serve on each Petitioner and file with the court a proposed schedule for briefing. Petitioners may file objections to the proposed briefing schedule within 10 days of the date it is filed, but unless the court order otherwise, the schedule filed by Respondent will be effective. Petitioners may file joint briefs without further order of the court. cl (C and M)

Aug. 14 Filed original supplemental certified index to the record in the Calif Transportation Control Plan which was inadvertently omitted from the July 11, 1974 letter. -ra-

Aug. 19 Filed, in 73-3420, order (C & M) the briefing schedule in the above-entitled matter is established as follows: petitioners' brief due September 16, 1974, respondent's brief due October 16, 1974, petitioners' reply brief due October 31, 1974; further ordered, the appeal in 73-3420 is dismissed and leave to permit mailing of service copies with certification of mailing in lieu of a list of addresses is granted. The motion for a 60 day stay by Texaco, Inc. is denied. jr

Sept. 16 Filed 25 copies petitioner's briefs. (Calif. Business Properties Assn, Los Angeles County Federation of Labor, et al.) (Sept. 13, 1974) tj

Sept. 16 Filed 25 copies petitioner's briefs. (County of San Bernardino) (Sept. 13, 1974) tj

Sept. 20 Filed, as of Sept. 18, in 73-3343, 25 copies Aplt's briefs. (Pacific Legal Foundation) (Sept. 16, 1974) tj

Oct. 7 Filed order (Hufstedler & Wallace) the filing of opening briefs by petitioners is stayed until December 1, 1974; further ordered, the effective date for enforcement of the Parking Management Control Regulations is stayed to and including March 15, 1975, all other opening briefs of petitioners dealing with remaining portions of the

DATE	FILINGS-PROCEEDINGS

1974

California Transportation Control Plan shall be filed on or before October 4, 1974. jr

Oct. 21 Filed, as of Oct. 3, 1974, in 73-3263 25 Aplt's briefs (City of San Jose) (Oct. 3, 1974) tj

Oct. 21 Filed as of Oct. 7, 1974, in 73-3259, 25 Aplt's briefs (City of Los Angeles) (Oct. 4, 1974) tj

Oct. 21 Filed, as of 10/16/74, order (Br & W) directing the clerk to file the statements in lieu of briefs of the petitioners in 73-3513, 73-3370, 73-3422, 73-3382, 73-3372 & 7303282. jr

Dec. 23 Filed order (Browning & Choy) upon due consideration of the motions of the parties, petitioners' opening briefs dealing with the Parking Management Control Regulations shall be due 30 days after respondent files the Supplemental Certified Record with the Court; the Clerk will so notify the parties when that record is filed; as to the remaining portions of the California Transportation Control Plan, respondent is hereby granted an ext to and including January 6, 1975 to file its brief; petitioners' reply briefs shall be filed on or before January 27, 1975; p * * *

1975

Jan. 16 Filed order (C, S) upon due consideration, the motion for stay of the effective dates of the California Transportation Control Plan is hereby denied. The respondent is granted leave to file an oversized brief of 88 pages, plus appendix, in typewritten form. However, respondent shall forthwith properly serve a copy of such brief on all petitioners. Petitioners are hereby granted an extension to and including Feb. 3, 1975 to file their reply briefs. sj

Jan. 20 FILED 25 RESPONDENTS BRIEFS (1/17/75). cl

Feb. 3 FILED 25 PETITIONERS (CITY OF LOS ANGELES, ET AL) BRIEFS (IN 73-3259) (1/31/75). cl

DATE	FILINGS-PROCEEDINGS

1975

Feb. 19 FILED 25 REPLY BRIEFS FOR STATE OF CALIFORNIA (2/18/75) ec

Feb. 21 FILED 25 PETITIONER'S REPLY BRIEFS (Pacific Legal Foundation) 1/31/75 ec

Feb. 27 Filed 25 Petitioner's Reply Briefs (County of S. Bernardino) 2/25/75) ec

Feb. 27 Filed, in 73-3406, order (K & E) the filing of opening briefs as to the issue of gasoline vapor recovery systems only is deferred until 40 days after the respondent files a supplemental record on appeal which includes its further and final publications as to the above described issue. jr

Mar. 6 FILED 25 REPLY BRIEFS OF CALIFORNIA BUSINESS PROPERTIES. (2/14/75) cs

Mar. 19 Filed order (K D) re: petitions which deal solely with review of the Parking Management Regulations of Calif Transportation Control Plan should be dismissed due to indefinite suspension of these regulations by respdt. Such dismissal would be without prejudice to filing of new pet if & when amended regulations are filed. All petitions in which brief, joint brief or statement in lieu of brief has not been filed in behalf of petr are dismissed subject to reconsideration in each individual case if objection is filed within 14 days from filing date of order. Further ordered that this order does not affect order of Feb. 27th granting stay of briefing schedule as to issue of gasoline vapor recovery systems. rh

May 9 Filed order (Koelsch & Duniway) upon due consideration of the objections, petitions for rehearings and requests for clarification rec'd in response to this Court's order of March 19, 1975, the Court enters the following order: 1) the order of March 19, 1975 is hereby vacated and annulled: 2) all further action in these cases dealing solely with the review of Parking Management Regula-

DATE	FILINGS-PROCEEDINGS

1975

tions of the California Transportation Control Plan are stayed until August 1, 1975 or until further order of this Court, which ever occurs first; 3) should Respondent EPA lift the indefinite suspension of the Parking Management Regulations or promulgate proposed final regulations designed to supersede said regulations, it is directed to inform this Court of such lifting of the suspension or promulgation within 10 days thereafter; 4) in the event neither the lifting of the suspension nor the promulgation of superseding regulations has occurred prior to July 15, 1975, the EPA is directed to inform this Court not later than July 25, 1975 of the then prevailing policy of the Agency with respect to such lifting of the suspension of promulgation and with respect to all other matters germane to the issues to which the Parking Management Regulations pertain. All cases consolidated by this Court's order of April 7, 1974 shall hereafter use case number 73-3268 as the consolidated case number. jr

UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

Consolidated w/ 73-3233 ect.

ADMIN PETITION TO REVIEW

FROM EPA REGION 9

CALIFORNIA BUSINESS PROPERTIES ASSOCIATION, BROADWAY-HALE STORES, INC., BUFFUMS, FEDERATED DEPARTMENT STORES, INC., J. C. PENNEY CO. INC., MONTGOMERY WARD & CO., INC., MAY DEPARTMENT, R. H. MACY & CO., SEARS, ROEBUCK & CO., THE WESTCHESTER ASSOCIATION, ANITA ASSOC., BOISE CASCADE HOME & LAND CORP., COLDWELL, BANKER & CO., ERNEST W. HAHN, INC., HARRY NEWMAN PROPERTIES, LOS ANGELES TURF CLUB, OCCDENTAL LIFE INSURANCE CO. OF CALIFORNIA, SANTA ANITA CONSOLIDATED, INC. AND THE LOS ANGELES ATHLETIC CLUB, PETITIONERS

vs.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

DATE	FILINGS-PROCEEDINGS
1975	
Jun. 1	Filed Order (Chambers) "a hearing on the Constitutional issues presented in the briefs will be heard on July 10, 1975 at 1:30 p.m. in the U.S. Courthouse in San Francisco; further Ordered the parties are requested to confer forthwith with the object of submitting to the Court of proposed expedited schedule for the briefing remaining to be done." (Cases to be heard: 73-3262-63; 65; 69-70; 82; 84; 97; 3302; 09; 15; 17; 42; 52; 55-56; 85; 3400; 13-14; 25; 45; 63; 3515; 17-18; 3296; 68; 3462; 83-84; 3278-74; 3505; 3305-06 & 3343.) cs

DATE	FILINGS-PROCEEDINGS
Jun. 19	Filed, in 73-3262, Order (Sneed) at the hearing set for 1:30 p.m. on July 10, 1975 argument on behalf of the parties shall be limited as follows: State of Calif. 30 minutes; Penney, So. Calif Gas, Sepulveda Properties & Security Pacific Nat'l Bank—15 minutes; Pacific Legal Foundation 10 minutes & U.S. EPA 30 further Ordered add'l briefs pertaining to the matters to be heard 7/10/75 not in excess of 25 pages desired to be filed, must be filed no later than July 1, 1975. cs
Jun. 27	Filed 25 Appellants Briefs (6/25/75) -dmf- To panel
July 1	Filed 25 Petitioner's Supp. Briefs on Constitutional Issues. (Pac. Legal Four (panel) ec
July 3	Filed 25 Supplemental Briefs (7/1/75) -dmf- To panel
July 7	Recvd 25 briefs of the EPA in response to brief of J.C. Penney Co. (7/2) (panel) cs
July 10	CAUSE ARGUED & SUBMITTED ON CONSTITUTIONAL QUESTIONS ONLY TO WRIGHT, KILKENNY, SNEED. fm
July 21	Rec'd respondent's letter of July 18, 1975 re: response to Judge Sneed's request at oral argument, etc. (panel) ec
July 30	Rec'd from David J. Toomey letter of July 28, 1975 re response to respondent's letter of July 18. (panel) ec
Aug. 15	FILED ORDER (WRIGHT, KILKENNY & SNEED) DISMISSED WITHOUT PREJUDICE.
Aug. 15	Filed & Entered Judgment. jr
Sep. 9	Issued judgment.

UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

Consolidated With:

73-3588, 74-1001, 74-1002, 74-1013, 74-1009

PETITION TO REVIEW
EPA REGION 9

STATE OF ARIZONA, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

DATE	FILINGS-PROCEEDINGS
1973	
Dec. 20	FILED ORIG. & 7 COPIES OF A PETITION TO REVIEW AN ORDER OF THE ENVIRONMENTAL PROTECTION AGENCY. $50
1974	
Feb. 15	Filed 4 certified copies of index of the record in lieu of record. cs
Feb. 25	Filed orig & 3 respondent's motion to consolidate appeal with appeals nos. 73-3588, 74-1001, 74-1002, 74-1009 & 74-1013. (to O'Fallon) cs
Mar. 22	Filed order (E, G) consolidating 73-3577 with 73-3588, 74-1001, 74-1002, 74-1009, 74-1013. ty
Apr. 8	FILED CERTIFIED EPA HEARING TRANSCRIPTS AND EXHIBIT VOLUMES IN THIRTEEN VOLUMES, ORIG. ONLY: VOL. I, II, & III, RECORD OF EPA HEARNG ON PROPOSED TRANSPORTATION CONTROL PLAN FOR THE PHOENIX-TUCSON INTRASTATE AIR QUALITY CONTROL REGION, SEPTEMBER 10-11, 1973, TUCSON, ARIZONA; VOL. IV, V, & VI, EXHIBITS OF LETTERS AND STATEMENTS; VOL. VII, VIII, & IX, RECORD OF EPA HEARINGS ON PROPOSED TRANSPORTATION CONTROL PLAN FOR THE PHOENIX-TUCSON INTRASTATE AIR QUALITY CONTROL REGION, SEPTEMBER 12-13, 1973, PHOENIX, ARIZONA; VOL. X, XI, XII, & XIII, EXHIBIT OF LETTERS AND STATEMENTS. One Box of Exhibits filed in Room 219.

DATE	FILINGS-PROCEEDINGS
Apr. 9	Appellant's brief due May 19, 1974. -jeh-
June 7	Filed, 25 appellant's briefs (for J.C. Penney Co., Inc. #73-3588) 6/5/75 gb
June 11	FILED 25 APPELLANTS BRIEFS (6/10/74)
June 17	FILED 25 APPELLANTS BRIEFS (6/14/74)
Aug. 20	Filed, as of Aug. 16, 1974, 25 copies Aple's briefs, (EPA), (Aug. 13, 1974) tj
Aug. 23	Filed order (C) granting respondents leave to file supp'l certified index to record effective 7 days after date (8/22/74) if no objection filed meanwhile. jr
Sep. 16	Filed 25 copies petitioner's (Broadway-Hale Stores, Safeway Stores, Sears, Roebuck, Homart Development, Proper Environment Planning) reply briefs. (Sep. 13, 1974) tj
Sep. 20	Filed Order (Merrill & Wright) granting respondent leave to file the supplemental certified index with the exception of document #52 "Evaluation Report for the State of Arizona" which shall be stricken; * * *
Oct. 1	FILED SEPT 20, 1974 CERT SUPPLEMENTAL RECORD ON APPEAL: (CERTIFIED INDEX AND EXHIBITS DOCUMENTS #53, 54, 55, & 56) FILED IN LPS -ra-
Oct. 3	Rec'd. 25 copies of Petitioner's Reply Brief (State Of Arizona) -mid-

DATE	FILINGS-PROCEEDINGS

1974

Dec. 16 FILED AS OF OCT 15, 1974, 25 PETITIONERS REPLY BRIEFS (10/1/74). cl

1975

Jan. 9 Filed order (C&S) petitioners' motion for expedited hearing, the Clerk is directed to calendar the case for oral argument to be held during the week of March 3, 1975 to March 7, 1975 in Los Angeles. jr

Mar. 4 ARGUED BEFORE (E, T, S, CJJ); SUBMISSION DEFERRED UNTIL FURTHER ORDER OF COURT. ty

Sept. 8 ORDERED OPINION (SNEED) FILED & JUDG TO BE FILED & ENTD

Sept. 8 Filed opinion—granted in part and dismissed without prejudice in part.

Sept. 8 Filed & Entered Judgment. jr

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Case No. 74-1007

ON PETITION FOR REVIEW OF AN ORDER OF
THE ENVIRONMENTAL PROTECTION AGENCY

(See Nos. 74-1011, 74-1026, 74-1037, 74-1052, 74-1062, 74-1063 and 74-1064)

STATE OF MARYLAND, PETITIONER

v.

RUSSELL E. TRAIN, ADMINISTRATOR, AND
ENVIRONMENTAL PROTECTION AGENCY, RESPONDENTS

DISTRICT OF COLUMBIA, a municipal corp., INTERVENOR

WASHINGTON AREA BICYCLIST ASSOC. INC., ET AL., INTERVENOR

For Review of an Order of the
Administrator of the EPA

December 6, 1973

DATE	FILINGS-PROCEEDINGS

1/3/74 Petition for review of an order of the Administrator of the Environmental Protection Agency filed and cause docketed.

1/21/74 Motion of the District of Columbia, a municipal corporation, for leave to intervene as a petitioner under Rule 15(d) F.R.A.P. filed.

2/19/74 Order granting Washington Area Bicyclist Association Inc., et al leave to intervene and the District of Columbia, etc., leave to intervene filed.

DATE	FILINGS-PROCEEDINGS

2/25/74 Respondent's motion to consolidate appeals for briefing and for filing of certified record filed; motion granted.

2/25/74 Certified list filed; brief dates set.

6/4/74 Order transferring Washington portion of this case to the D.C. Court of Appeals filed. (vsl)

8/19/74 Five (5) copies of the petitioner's brief filed. tf

8/19/74 Four (4) copies of petitioner's brief (Adcor, Assoc Dry Goods, J.C. Penney) Filed, j/w 74-1011, 1026, 1037, 1052, 1062-63. -tf

8/22/74 Twenty-five (25) copies of the petitioner's brief for (Adcor Realty, Assoc. Dry Goods and J. C. Penney) Jt. w/ 74-1011, 26, 37, 52, 62, 63, and 74-1064 filed. (wtc)

11/4/74 Order denying motion to delay consideration of review cases; motion of certain petitioners to expedite review of cases is granted; the alternative motion of certain of the petitioners to stay the Parking Management Regulations is not passed upon; and the order is without prejudice for the parties to renew the motions before a panel of this court filed. (foc)

11/20/74 Four (4) copies of the supplemental Narrative of petitioner's filed Jt. w/74-1011, 1026, 1037, 1052, 1062, 1063, & 74-1064. (whf)

11/20/74 Four (4) copies of the supplemental brief for petitioner May Co. filed Jt. w/74-1011, 1026, 1037, 1052, 1062, 1063, & 74-1064. (whf)

11/21/74 Twenty-five (25) copies of the supplemental brief of petitioners J. C. Penney & M. Ward filed Jt. w/74-1011, 1026, 1052, 1062, 1063, & 1064. (whf)

11/29/74 Four (4) copies of the respondent's brief received. (wtc)

12/12/74 Ten (10) copies of the respondent (St. of Md.) brief filed. (whf)

DATE	FILINGS—PROCEEDINGS

12/13/74 Ten (10) copies of the joint appendix filed Jt. w/74-1011, 1026, 1037, 1052, 1062, 1063, 1064. (whf)

12/16/74 Twenty-five (25) copies of the petitioner's (May Co.) brief filed Jt. w/74-1007, 1011, 1026, 1037, 1052, 1062, 1063, & 74-1064. (whf)

12/16/74 Twenty-five (25) copies of the petitioner's (may Co.) supplemental brief filed. Jt. w/74-1011, etc. (whf)

12/17/74 Cause argued before Widener, Circuit Judge, MacKenzie and Warriner, District Judges, and submitted. (wu)

12/18/74 Record of EPA for the Baltimore Transportation Control Plan, in ten volumes (contained in two boxes) joint with 74-1011, 26, 37, 52, 62, 63 and 64. transmitted to Judge Widener along with tape. (wu)

9/19/75 Opinion (HEW) filed; copy sent to counsel of record and to EPA in Washington. (vsl)

9/19/75 Decree filed; order of EPA enforced in part and reversed in part. (vsl)

1/15/76 Notice evidencing the filing petition for writ of certiorari in the Supreme Court January 7, 1976 filed. (No. 75-960) (jhl)

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

74-1013

PETITION FOR REVIEW OF AN ORDER OF THE ENVIRONMENTAL PROTECTION AGENCY

DISTRICT OF COLUMBIA, ETC., PETITIONER

v.

RUSSELL E. TRAIN, Administrator,
Environmental Protection Agency

and

ENVIRONMENTAL PROTECTION AGENCY, ETC., RESPONDENTS

WASHINGTON AREA BICYCLIST ASSOC., INC., METROPOLITAN WASHINGTON COALITION FOR CLEAN AIR, INC., BREATHERS FOR THE REDUCTION OF ATMOSPHERIC HAZARDS TO THE ENVIRONMENT, INTERVENORS

DATE	FILINGS—PROCEEDINGS
(G) 1-3-74	4-Petitioner's petition for review of an order of the Environmental Protection Agency (m-3)
(L) 2-1-74	4-Motion of Washington Area Bicyclist Association, Inc. et al for leave to intervene (m-31)
(B) 2-13-74	Clerk's order granting motion by Washington Area Bicyclist Assoc., Inc., and the Metropolitan Washington Coalition for Clean Air, Inc., and Breathers for the Reduction of Atmospheric Hazards to the Environment for leave to intervene; * * *

DATE	FILINGS—PROCEEDINGS
(L) 2-13-74	4-Respondent's motion to consolidate with Nos. 73-2234, 73-2238, 74-1015, 74-1016, 74-1018 and 74-1030 and to file a single record (m-13)
(B) 3-4-74	Clerk's order that nos. 73-2234, 73-2238, 74-1013, 74-1015, 74-1018 and 74-1016 and 74-1030 are consolidated for all purposes; further ordered that Clerk is directed to file certified index to record and it shall be deemed filed in all of the above cases
(B) 12-30-74	Per Curiam order sua sponte, that nos. 74-1013, 74-1575, 74-1577, 74-1579, 74-1580, 74-1581 and 74-1582 are consolidated for consideration on the merits the time filing petitioner's brief is extended to February 11th; Respondent's brief shall be filed 30 days from the date of filing petitioner's brief and petitioner's reply brief and the joint appendix shall be filed 15 days thereafter; the date of oral argument of these cases shall be established by a future order of the Court; MacKinnon and Robb, CJ (PERTAINS ONLY TO NOS. 74-1013, 74-1575, 74-1577, 74-1579, 74-1580, 74-1581 and 74-1582)
(G) 2-7-75	15-Petitioner's brief (m-7)
(B) 3-10-75	7-Brief for Intervenors Washington Area Bicyclist Assoc., Inc., et al., (m-10)
(K) 3-24-75	7-Respondent's Brief (m-24)
(R) 4-8-75	Per Curiam order that the motion to extend time to file petitioner's reply brief granted and the time for filing petitioners' reply briefs and the joint appendix in these consolidated cases is extended to April 25th; sua sponte, that oral argument in the consolidated cases will be heard on May 12, 1975 at 10:00 A.M. the Courtroom of the U.S. Court of Appeals for the District of Columbia Circuit Fifth U.S. Courthouse; MacKinnon and Robb, CJ; and Christensen, U.S. Sr. District Judge for the District of Utah, sitting by designation
(G) 4-25-75	7-Petitioner's reply brief (m-25)

DATE	FILINGS—PROCEEDINGS
(K) 5-2-75	15-Petitioner's Reply Brief (m-2)
(K) 5-2-75	15-Intervenors' Brief (m-2)
(K) 5-2-75	15-Respondents' Brief (m-2)
(K) 5-2-75	7-Joint Appendix (m-2)
(R) 5-12-75	Argued before MacKinnon and Robb, CJ and A. Sherman Christensen, Sr. U.S. District Judge for the District of Utah, sitting by designation
(G) 9-8-75	4-Respondents' motion for leave to file a supplemental brief (m-8)
(R) 9-25-75	Per Curiam order that respondent's motion for leave to file supplemental brief is denied; MacKinnon and Robb, CJ; and Christensen, U.S. Sr. District Judge for the District of Utah, sitting by designation.
10-28-75	Opinion for the Court filed by Circuit Judge MacKinnon.
10-28-75	Judgment affirming in part and remanding case for further proceedings. (n)
11-19-75	Certified copy of opinion and judgment issued to the EPA.
(G) 2-3-76	Notice of filing petition for certiorari in S.C. No. 75-1055 on January 26, 1976.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[TRANSFERRED FROM 4TH CIRCUIT]

74-1582

PETITION FOR REVIEW OF AN ORDER OF THE ENVIRONMENTAL PROTECTION AGENCY

COMMONWEALTH OF VIRGINIA, EX REL. THE STATE AIR POLLUTION CONTROL BOARD, PETITIONER

v.

RUSSELL E. TRAIN, ADMINISTRATOR AND ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT

DATE	FILINGS—PROCEEDINGS
(L) 6-7-74	Proceedings transferred from the United States Court of Appeals for the Fourth Circuit (n-3)
(B) 12-30-74	Per Curiam order, sua sponte, that nos. 74-1013, 74-1575, 74-1577, 74-1579, 74-1580, 74-1581 and 74-1582 are consolidated for consideration on the merits: time for filing petitioner's brief is extended to February 11th, Respondent's brief shall be filed 30 days from the date of filing petitioner's brief and petitioner's reply brief and joint appendix shall be filed 15 days thereafter: date of oral argument shall be established by a future order of the Court: MacKinnon and Robb, CJ
(G) 2-6-75	15-Petitioner's brief (m-6)
(G) 2-6-75	10-Appendix (m-6)
(K) 3-24-75	7-Respondent's Brief (m-24)
(G) 4-25-75	15-Petitioner's reply brief (m-25)

DATE	FILINGS—PROCEEDINGS
(K) 5-2-75	15-Petitioner's Brief (m-2)
(K) 5-2-75	15-Petitioner's Reply Brief (m-2)
(K) 5-2-75	15-Respondents' Brief (m-2)
(K) 5-2-75	7-Joint Appendix (m-2)
(R) 5-12-75	Argued before MacKinnon and Robb, CJ and A. Sherman Christensen, Sr. U.S. District Judge for the District of Utah, sitting by designation
10-28-75	Opinion for the Court filed by Circuit Judge MacKinnon.
10-28-75	Judgment affirming in part and remanding for further proceedings. (n)
(G) 2-3-76	Notice of filing petition for certiorari in S.C. No. 75-1055 on January 26, 1976
(G) 2-3-76	Notice of filing petition for certiorari in S.C. No. 75-1050 on January 26, 1976.

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

CALIFORNIA AIR QUALITY STANDARDS

Approval and Promulgation of Implementation Plans

This notice of proposed rule making sets forth a transportation control plan for the Metropolitan Los Angeles Intrastate Air Quality Control Region (hereinafter, Los Angeles AQCR or South Coast Air Basin), as required by order of the U.S. District Court for the Central District of California, November 16, 1972. This proposal results from the failure of the State of California to submit an acceptable implementation plan for the attainment and maintenance of the National Primary Ambient Air Quality Standard for photochemical oxidants.

BACKGROUND

Under the Clean Air Act Amendments of 1970 (hereinafter referred to as the Act), enacted December 31, 1970 (Public Law No. 91-604, 42 U.S.C. 1857 et seq.), Congress required the States to prepare plans to implement the National Ambient Air Quality Standards promulgated on the basis of health and public welfare effects by EPA.

EPA promulgated the ambient standards on April 30, 1971. Pursuant to the statutory timetable, each State had 9 months in which to develop, adopt, and submit detailed plans for implementation of the ambient standards. The State plans submitted on January 31, 1972, were to contain emission limitations and such other measures as necessary to insure attainment and maintenance of the ambient standards, including transportation controls if necessary. (Clean Air Act, section 110 (a) (2) (B).)

In most areas of the country the ambient standards could be met by the imposition of emission controls on stationary sources of pollution. EPA and the States had

adequate knowledge of and experience with these types of controls. Their feasibility, effectiveness, and impact upon the sources as well as the community could be evaluated with reasonable accuracy. In other areas of the country, mobile sources were a predominant source of pollution, but the ambient standards would be met as a result of the decrease in pollution due to increasingly stringent Federal emission standards for new cars required by other sections of the Clean Air Act.

However, in certain areas the combination of controls on stationary sources and the Federal emission standards for new cars would not be sufficient. Therefore "transportation controls," i.e., measures which would reduce individual vehicle emissions and/or vehicle miles traveled, became necessary. Unlike the situation with respect to stationary sources, however, neither EPA nor the States had any real experience with these types of controls. The nature of the controls required, their effectiveness, their effect on air quality, and their social and economic impacts were essentially unknown. Accordingly, the Administrator determined that it was unreasonable to require that States include transportation controls in the plans submitted on January 31, 1972. He determined that States could instead submit a description of the transportation control measures which they were considering on that date. The submission of the actual transportation control strategies, when required, was deferred until February 15, 1973. It was anticipated that the additional year would give both EPA and the States more time to study this new problem, so that intelligent choices could be made by the States and so that EPA, in accordance with its responsibilities under the law, could make a meaningful review of the strategy selected by the State.

On May 31, 1972, in accordance with the Act, the Administrator disapproved California's plan for the Los Angeles AQCR (South Coast Air Basin) because the plan on its face did not provide for the achievement of the ambient standard for photochemical oxidants, 37 FR 10842, May 31, 1972 (40 CFR 52.238).

On September 6, 1972, in "City of Riverside, et al. v. Ruckelshaus," Civil No. 72-2122-H, the city of Riverside, the city of San Bernardino, and various other organizations and individuals brought suit against EPA in the U.S. District Court for the Central District of California. The complaint stated that the Administrator had failed to promulgate transportation controls for the South Coast Air Basin although such controls were needed and the portions of California's plan which lacked such controls had been disapproved. Pursuant to that complaint, the U.S. District Court determined on November 16, 1972, that the Act did not permit the time for further study of the impact and effectiveness of transportation controls. Accordingly, the Court ordered the Administrator to "* * * prepare and publish in the FEDERAL REGISTER by no later than January 15, 1973, (proposed) regulations setting forth an implementation plan" for attainment of the primary ambient air quality standard for photochemical oxidants. This notice of proposed rule making is in compliance with the Court's order.

The Governor of California requested an extension to 1977 to meet the primary standard for photochemical oxidants. Therefore, this proposal is directed toward meeting that deadline.

It should be noted that the State of California is continuing to develop a transportation control strategy for the South Coast Basin. Since the State may proceed in accordance with the original schedule allowed by EPA, the State strategy is expected to be submitted to EPA in mid-February. It has been the Administrator's policy to be guided in his final promulgation by approvable segments of the State plan.

POLLUTION IN THE LOS ANGELES AQCR

The South Coast Air Basin covers a major portion of Southern California, encompassing all of Orange and Ventura Counties, the western portion of Riverside County, the southwest portion of San Bernardino County, the southern coastal portion of Santa Barbara County, and all but the extreme northeastern corner of Los An-

geles County. (The air quality problems of the region are, in many ways, unique). The region is geographically and meteorologically closed. The encircling mountains and frequent inversions hold in pollutants, and the Southern California climate provides ample sunshine to aid the formation of photochemical smog. The automobile is by fair [sic] the dominant mode of transportation. For example, in 1972 the South Coast Air Basin contained over 10 million persons and nearly 6 million motor vehicles.

This extremely high automobile population, combined with a low-density, sprawling pattern of development which distributes the population over the entire area of the basin, together make the application of transportation controls as well as the necessary alternatives, e.g., mass transit, extremely difficult in the Los Angeles region. Moreover, the area is still growing. The current rate of population growth is now a 1.7-percent increase per year. However, the automobile population grows more rapidly, at 3 percent to 4 percent per year, and gasoline consumption grows even more quickly, at 4.5 percent per year.

The Primary National Ambient Air Quality Standard for photochemical oxidants is 160μg/m3 0.08 parts per million (p.p.m.) average for a 1-hour period not to be exceeded more than once per year. The standard, promulgated on April 30, 1971 (36 FR 8186), is based on evidence of increased frequency of asthma attacks in some asthmatic subjects on days when estimated hourly average concentrations of photochemical oxidants reached 0.10 p.p.m. A level of 0.08 p.p.m. was therefore judged necessary by the Administrator to protect public health with an adequate margin of safety, as required by the Act.

In 1970, this standard was exceeded at some location in the Los Angeles AQCR on at least 250 days. The maximum 1-hour reading for oxidants in the region in 1970 was 0.62 p.p.m. in Riverside. This reading exceeded the national standard nearly eight-fold. The second highest reading was 0.58 p.p.m. During 1970 a full 10 percent of the oxidant readings taken in the basin

were 0.40 p.p.m. (five times the national standard) or higher.

SUMMARY

Studies presently available to the Administrator indicate that a reduction of approximately 87 percent in projected emissions of reactive hydrocarbons is necessary to achieve the National Primary Ambient Air Quality Standard for photochemical oxidant by 1977 in the Los Angeles AQCR.

As most of the reactive hydrocarbon emissions in the South Coast Basin are attributable to motor vehicle emissions, the analysis available to EPA indicates that in addition to stringent controls for stationary sources and requirements for limiting emission of individual motor vehicles a reduction in vehicle miles traveled (VMT) by gasoline-powered motor vehicles of over 80 percent will have to be effected to achieve the ambient air quality standard for photochemical oxidants in 1977 as required by law. The proposed regulatory mechanism to accomplish the reduction in vehicle miles traveled (VMT) is gasoline rationing.

Based on the extent of analysis which it has been possible to complete so far, the Administrator has concluded that the approach proposed today, including the VMT reduction, is the only one which could be proposed at this time with any confidence that it can achieve the ambient air quality standards. Other approaches, some of which may be less extreme, appear to present problems regarding feasibility and effectiveness. The Administrator emphasizes that further analysis may demonstrate that other options are available.

Although the Environmental Protection Agency (EPA) has serious reservations as to the feasibility and desirability of the course of action proposed here, legal requirements placed on the Agency by the Act leave the Administrator with no presently available legal alternative but to propose this plan. It is clear that extreme measures will be necessary to comply with statutory requirements. Indeed, it appears that any plan that will

attain the primary standard by 1977, whether it includes gasoline rationing or some other strategy to reduce VMT, will lead to significant economic disruptions and will certainly result in a major transformation in the life style of residents of the South Coast Air Basin.

No air pollution control plan for the South Coast Air Basin will be promulgated in final form until full public participation and debate, including public hearings, has taken place. The participation of State and local officials in both the development and the implementation of the plan is also of vital importance. Extensive public hearings will be held upon this and alternative proposals no sooner than 30 days from the date of this notice of proposed rule making. Dates, times, and places, will be announced in a forthcoming issue of the FEDERAL REGISTER.

It is hoped that the public debate will focus on the proposed plan, on possible alternative control plans and also on measures (such as the development of a mass transit system) which could reduce the adverse consequences of any plan. The Administrator is concerned that all positive and adverse aspects of the issue be publicly aired and weighed so that resultant decisions will be in the total public interest.

CURRENT STUDIES

The Environmental Protection Agency has published the results of an investigation of certain transportation control measures in "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas," (The Six Cities Study), November 1972. Additional information is contained in "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas, Final Report," November 1972. Both reports are available from EPA, Office of Technical Information and Publications, Research Tringle Park, N.C. 27711. Additional information is contained in the EPA document, "Control Strategies for In-use Vehicles," November 1972. This report is available from EPA, Mobile

Source Pollution Control Program, 401 M Street SW., Washington, DC 20460. Specific studies to limit automobile emissions and usage in the Metropolitan Los Angeles Intrastate Air Quality Control Region are currently being done under EPA contract. The results of these studies will be available in February 1973, and preliminary results were used in the development of the proposed regulations.

TRANSPORTATION CONTROL ALTERNATIVES

The Administrator's analysis of the air quality problems of the South Coast Air Basin indicates that if all available measures are taken to reduce reactive hydrocarbon emissions from individual motor vehicles and stationary sources, the ambient air quality standard for photochemical oxidants will still be exceeded in the basin approximately 90 days per year in 1977. These 90 days will occur between the months of May and October. The analysis further indicates that motor vehicles, notably automobiles, will be the predominant source of reactive hydrocarbons after all available measures to reduce the emissions of individual vehicles and stationary sources have been taken. Further control measures to meet the ambient air quality standards must therefore consist of reductions in motor vehicle use, or vehicle miles traveled (VMT). A VMT reduction of over 80 percent is required to achieve compliance with the ambient air quality standards in 1977. Lesser reductions are needed in subsequent years as a result of the Federal motor vehicle emissions control program. However, the analysis indicated that VMT reductions of up to 50 percent may be needed as late as 1935 [sic].

The required VMT reductions can be obtained by several alternative means:

(1) Reduce VMT by the required amount during the entire period, May to October, through increased use of mass transit, increased car pooling, vehicle free zones, gasoline rationing, increasing the cost of motor vehicle

use, limiting the number of automobiles and motorcycles registered, land use controls, or a combination of these.

(2) Forecast up to 24 hours in advance the days on which the ambient air quality standard for oxidants will be exceeded, and use emergency regulatory means to prohibit the use of motor vehicles (or all but certain classes of motor vehicles) on those days. (Intermittent control)

(3) Through application of one or more of the measures listed in (1), reduce VMT enough (perhaps 40 percent) to bring the number of days the ambient air quality standard is violated to a level substantially below 90 days (perhaps to 20 to 25 days). Apply the emergency measures described in (2) on those days for which the air quality standard is forecast to be violated (partial intermittent control). The number of days per year on which these emergency measures must be taken can be expected to decline as the prevalence in the vehicle population of vehicles with 1975 Federal emission controls increases.)

While intermittent or partial intermittent controls may provide potentially attractive alternatives, the effectiveness of such controls, including the technical feasibility of adequately forecasting the need for emergency measures, is uncertain at this time. Various measures to reduce VMT on a continuing basis may be available but present substantial questions as to effectiveness and feasibility. Only gasoline rationing is presently considered to be demonstrably effective to achieve compliance with the ambient air quality standards by 1977. It is expected that the magnitude of needed VMT reductions will decrease beyond 1977 as the prevalence in vehicle population of automobiles with Federal 1975 emissions controls increases, but it does not appear that at any time would Federal 1975 emissions controls alone result in achievement of the ambient standards.

Proposed Control Strategy

The Administrator proposes to require controls on stationary sources and retrofit devices and inspections on automobiles as described below, and to reduce VMT by a system of gasoline rationing, the system to be effective during the smog season, May through October. The amount of rationing may be different for different months, up to an expected maximum of 82 percent. The rationing system may be enforced at the individual vehicle operator's level, with gas coupons required to purchase gasoline. Or it may be enforced at the manufacturer's level only, with price controls at the retail level (to prevent windfall profits) and all gasoline sold on the basis of first-come-first-served. Public comment is invited on these options, and on questions of implementation, including eligibility for coupons, and transferability of coupons. Comment is is also invited on the possibility of rationing gaseous fuels.

PROPOSED CONTROLS ON STATIONARY SOURCES

Controls to prevent hydrocarbon emissions will be imposed on a variety of stationary sources. The Los Angeles County Air Pollution Control District (APCD) has made changes in its restrictions (Rule 66) on solvent use. We propose that the control in the amended regulation apply to the entire South Coast Basin. Vapor recovery systems that prevent evaporation of gasoline into the air will be required for service stations. In addition, a change in the substance used in industrial "degreasing" operations will be required. Finally, a vapor recovery system that prevents evaporation of solvents into the air will be required of dry cleaners. Should additional stationary source controls prove feasible and desirable, they may be proposed at a later date.

The EPA is currently carrying on an investigation of the adequacy of the local air pollution control district regulations exempting certain organic componds from control. It is anticipated that these regulations (such as

Rule 66, Los Angeles County) will be reevaluated prior to 1975 after extensive additional experimental studies.

PROPOSED CONTROLS ON MOBILE SOURCES

Due to their substantial contribution to hydrocarbon emissions in the South Coast Basin (1.056 tons/day in 1970 vs. 195 tons/day from stationary sources), transportation sources, principally automobiles, also must be controlled. Calculations by EPA indicate that the 1970 mobile emissions are significantly different from those contained in the Implementation Plan submitted by California in February 1972. The difference is attributable to more accurate emission factors that have recently become available (see "An Interim Report on Motor Vehicle Emission Estimation," Kircher and Armstrong, EPA, October 1972, and available from the Office of Land Use Planning, EPA, Research Triangle Park, N.C. 27711). As a result of these calculations, the hydrocarbon emissions from all sources in 1970 are significantly less than in the plan (1,250 tons/day vs 1,590 tons/day reactive HC). The revised emissions values are being incorporated by the State into its present calculations.

Although the Federal emission standards for new cars will impose very stringent emission limitations on new autos beginning in 1975 and 1976, the limitations will not be adequate to meet the national ambient standard in the South Coast Air Basin by the deadline of July 1977, since by that time on [sic] more than 20 to 30 percent of the vehicle population will be 1975 or later cars.

Additional controls will include retrofit devices, installed on pre-1975 automobiles, inspection programs, and gaseous fuel conversion of fleet vehicles. The State of California will require vacuum spark advance disconnection (VSAD) on most 1955 to 1970 cars, and positive crankcase ventilation (PCV) on most 1955 to 1970 cars.

The following controls are proposed by EPA. All light- and heavy-duty gasoline-powered vehicles will be required to be inspected annually using a loaded emissions test (i.e., dynamometer loading test), a test that simulates actual driving conditions. Vehicle owners will be required to have any maintenance performed which is needed to insure that all pollution control devices on the vehicle work properly and the vehicle operates at low pollution levels.

Evaporative controls to prevent evaporation of gasoline from the gas tank and carburetor will be required as retrofit on all 1966 to 1969 model year light-duty gasoline-powered vehicles and on 1966 to 1972 model year heavy-duty gasoline-powered vehicles. A further requirement will be the installation of an oxidizing catalyst on all 1966 to 1974 model year light- and heavy-duty gasoline vehicles.

Finally, all 1971 to 1974 model year light and heavy duty vehicles in all fleets of over 10 vehicles will be required to convert to run on gaseous fuels.

PROPOSED REDUCTION IN VMT

Reducing the emissions of each car is not enough to meet and maintain the national standards. The vast number of cars in the basin offsets much of the emissions reduction gained by control devices on individual cars. The combined effect of all the controls to be placed on stationary sources and automobiles mentioned above will reduce the number of days on which the oxidant standard is exceeded to about 90 days per year. In order to meet the more stringent requirement of the law, limitations must be placed upon the amount of driving done in the South Coast Basin.

The highest oxidant reading in 1970 in the South Coast Basin was 0.62 p.p.m., at Riverside, and the plan proposed by the Administrator must be capable of reducing hydrocarbon emissions sufficiently that the reading would not exceed 0.08 p.p.m. To do this, in addition to imposing the controls over stationary and automotive sources described above, VMT must be reduced by approximately 82 percent for the peak period. Reductions will be effected by a system of gasoline ra-

tioning effective during the months of May through October. (Public comment is invited on the possibility of also rationing gaseous fuels.)

The following table is a summary of the effect of each element of the proposed strategy on the overall reduction necessary. The uncontrolled emissions in 1977 are projected to be 691 tons per day of reactive hydrocarbons. The total allowable emissions to meet the 0.08 National Standard are 161 tons per day. All calculations are based on 1970 air quality data as 1970 is the year for which the emissions inventory is available. There is no reason to believe that 1970 was a year of unusually high oxidant concentrations. The 0.62 p.p.m., maximum oxidant value used here is the same as that used by the State to evaluate emission reductions measures after excluding a higher reading whose validity was challenged.

COMPILATION OF CONTROL STRATEGY EFFECTS ON JUNE 30, 1977

	Tons per day	Percent of total reduction due to each control
Stationary source emissions without control strategy	140	
Expected reductions:		
a. Dry cleaning vapor recovery:	—6	1
b. Degreaser substitute	—25	5
c. Other statutory rule strengthening	—45	9
Stationary emissions remaining	64	
Motorcycle emissions without control strategy	30	
Expected reductions	0	
Motorcycle emissions remaining	30	

Aircraft emissions without control strategy	35	
Expected reductions	—11	2
Aircraft emissions remaining	24	
Mobile emissions from on-highway light and heavy duty vehicles and from gasoline marketing operations without control strategy	486	
Expected reduction:		
a. Gasoline marketing vapor control	—37	7
b. VSAD and PCV retrofit	—13	2
c. Inspection and maintenance	—28	5
d. Vehicle evaporative control retrofit	—19	4
e. Gaseous fuel conversion	—8	2
f. Oxidizing catalyst retrofit	—70	13
g. Gas rationing	—269	51
Mobile emissions remaining	42	
Total emissions without control strategy	691	
Total reductions	—531	100
Total emissions remaining	160	

The regulations proposed herein implement the basic control strategy. Supplemental regulations will be proposed at a later time.

Additional technical information is contained in: Technical Support Document for the Proposed Transportation Control Strategy for the Metropolitan Los Angeles Intrastate Air Quality Control Region, available from the Region IX Office, Environmental Protection Agency, 100 California Street, San Francisco, CA 94111.

Economic and Social Impact of the Los Angeles Transportation Control Plan

Congress recognized that achievement of the goals of the Clean Air Act would have a significant impact on many urban areas. A quantitative assessment of the impact of the plan on the economic and social fabric of the community has not been possible due to the lack of time and the innate complexity of the issue. However, we have tried to describe the type of impacts which would occur. First, vehicle owners may have to assume the direct costs of emission abatement equipment to bring their vehicles into compliance. Second, reduction in the mobility of workers and consumers could have a major impact on the economic fabric of the community. Third, interference with the ability of citizens to move as freely will alter the lifestyle of the region. Obviously, the severity of the impact depends on the degree of vehicle usage restrictions, on the manner that direct costs of abatement equipment are financed, and the degree to which the effects can be ameliorated particularly through the development of a mass transit system.

DIRECT COSTS TO AUTOMOBILE OWNERS

Elements common to all of the transportation control strategies considered are retrofitting of light-duty vehicles, an inspection and maintenance program to insure proper functioning of abatement equipment and emission control devices on gasoline marketing equipment. The cost of control devices could range from $200 to $400. The annual cost of inspection/maintenance and the increased cost of gasoline caused by marketing controls is estimated to be $5 to $15.

If a sizable share of these costs falls on individual automobile drivers, the burden will weigh more heavily on low-income families. This effect is exacerbated by the fact that older cars, subject to higher abatement equipment costs, tend to be owned by low-income families.

EFFECT ON THE ECONOMIC FABRIC OF THE COMMUNITY

The direct and indirect effects of the plan on the economy of the basin are obviously dependent on the extent of the reduction in VMT.

Wage and salary earners. If VMT reductions resulted in workers missing work, loss of income could result. Such a loss of income would have a corresponding impact on purchasing power affecting business sales. If a mass transit system could be developed to replace the use of autos in work-related trips (⅓ of VMT), then the income loss could be minimized.

The monetary cost to the worker of shifting from the auto to mass transit would depend on the degree of transit fare subsidization.

Service and retail industry. The impact on service and retail establishments will depend on the ability of a mass transit system to service nonwork trips. Further study is clearly needed to assess how well and at what cost a transit system could fulfill this task. We would expect, however, that it is easier to design a transit system to carry work-related trips.

The use of autos for nonwork-related trips depends on the control strategy. Gas rationing places a limit on the number of miles traveled. Intermittent controls limit travel during crisis periods but allow travel at other times. Intermittent controls would have less of an impact on buying activities by consumers if people can tailor their nonwork trips to correspond with noncrisis periods. People may be able to delay shopping and recreation trips for days, thus alleviating the impact of decreased mobility on sales. Alternatively, service and retail establishments may be able to tailor sales hours to nonpeak, noncrisis periods.

The adverse effect on service and retail sales also depends critically on the ability of individuals to economize on nonwork trips and still shop and engage in recreation activities. We simply do not know the extent to which nonwork trips can be combined or eliminated resulting in a significant decrease in the number of miles traveled without a deterioration in the standard of living.

Manufacturing, wholesale trade and the distribution system. Maintenance of the system to distribute goods is critical to the viability of the economy, especially for life-sustaining necessities.

Large trucks are already largely diesel powered and would be allowed to operate under the proposed plan. Fleet vehicles could convert to gaseous fuel at a cost of $500 to $800 per vehicle. Smaller gasoline powered trucks and vehicles would have to be retrofitted with control devices. Their operation would, however, be restricted under gas rationing or under intermittent controls during crisis periods.

Cost of doing business may rise to an unknown extent. Business may also be faced with increased pressure for higher wages and salaries as workers try to offset increased costs to the individual resulting from the transportation control plan. It is not known whether such cost increases will be significant enough to affect the competitive position of firms in the South Coast Air Basin, causing them to lose sales both within the South Coast Air Basin and on goods now produced within the basin and sold to other markets.

Time limitations have made it impossible to investigate effects on specific industries. Some industries will be adversely affected, while other will experience an increase in sales. For instance, the burden would fall very hard on service stations and automobile supply outlets. On the other hand, the demand for mass transit and communications facilities will increase. Even with more time, it is not clear that a reasonable estimate of the impact on specific industries could be made.

TAX REVENUE IMPLICATIONS

The transportation control plan will have direct and indirect effects on local, State, and Federal tax revenues. Some illustrative impacts are cited below.

It is not clear whether property taxes collected in the South Coast Air Basin will rise or fall. It seems certain that property values will change depending on location. For example, property near shipping and work zones will increase in value while that in suburban vicinities will decrease.

Excise, sales, profit, and income taxes would probably decline if purchasing power in the South Coast Air Basin diminishes. Excise taxes from gasoline would certainly fall. However, declines in revenues related to some forms of spending (gasoline) will be offset to some degree by increased expenditures for other goods.

The effect on State and local budgets will also depend on whether subsidies and/or new taxes (parking, gasoline) related to the transportation control plan will be instituted.

SUMMARY OF IMPACTS

Maintenance of the economic fabric of the South Coast Air Basin requires:

(1) Workers being able to get to and from their jobs so that production and labor income can be maintained.

(2) Sufficient commercial vehicular mobility to allow the distribution system to function effectively.

(3) Sufficient mobility to roughly maintain the present pattern and level of spending (shopping, recreation, etc.).

The inability to perform any of these basic economic functions would cause serious dislocations to the South Coast Air Basin economy leading to the loss of jobs, which in turn leads to lower purchasing power, and drops in sales.

The viability of the economy may be adversely affected under any significant reduction of VMT. The monetary cost of improved air quality will be significant, although how seriously this might affect industry is undetermined. How serious the impact will be depends critically on supplementary policy actions designed to maintain the standard of living especially:

(1) The development of a mass transit system to substitute for automobiles.

(2) The extent of subsidization of abatement equipment and a mass transit system.

(3) The degree to which people are able to economize on their use of the automobile and still perform the functions which support their standard of living.

EPA Efforts To Mitigate the Effects of Proposed Regulations

The combined effect of these proposed regulations, together with the California Implementation Plan, will eliminate the danger to human health and welfare that exists in the South Coast Air Basin from air pollution. They will, however, have a great economic and social impact. The Administrator will make every effort possible to mitigate the effects of his final promulgation. He will be in contact with the Department of Transportation and other departments as necessary. The Administrator of EPA will request that the departments and agencies give special attention to the needs of the South Coast Air Basin for strategies to reduce VMT and for mass transit to replace the automobile travel eliminated by the proposed controls, aid to those whose businesses are damaged by restricted automobile travel, and aid to those whose jobs are affected by the proposals (particularly those in the automobile service industries, such as service stations and mechanics).

The Need for Mass Transit

The development of large-scale mass transit facilities in the Los Angeles area is essential to any effort to mitigate the disruptions that can be caused by significant reductions in automobile use. A public mass transportation system that can absorb the travelers displaced by sizable reductions in gasoline consumption or vehicle miles traveled will have to be considerably more extensive than the system now existing in Los Angeles. The existing Los Angeles Rapid Transit District system consists of about 1,500 buses. The maintenance of reasonable mobility of the commuter will require many

times this number of buses together with many service improvements to provide viable alternative transportation modes. Although the Administrator may not have authority to direct Los Angeles to provide expanded mass transit facilities, he is firmly of the belief that such expanded facilities are essential to the success of any air pollution control strategy for the South Coast Air Basin. The Administrator therefore is conducting an investigation of the needs and possibilities for transit expansion in the basin and he encourages and will provide all possible support to efforts by Federal, State, local governmental, and private groups to expand the mass transit facilities in the basin.

The Administrator recognizes that the present low density, sprawling land use pattern in the Los Angeles area is not conducive to the efficient use of mass transit. The long-term problems of attaining and maintaining high levels of transit service and usage would be considerably eased through the application of public policy measures to promote the centralization and corridorization of activities that generate large demands for transportation. The time period required for such policy measures to take effect prohibits their use by the Administrator to achieve the ambient air quality standards by 1977. In addition, such measures would not eliminate the need for many of the emissions control measures proposed here. However, proper land use policies would greatly assist the long-term implementation of such emissions control measures as VMT reductions.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the only approach available to him at the present time that is demonstrably capable of achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieveing the ambient air quality standards in

the South Coast Air Basin. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy for the basis [sic] (e.g., expanded mass transit), means of implementing these measures, and the comparative social and economic effects of alternative pollution control measures.

Questions also exist as the EPA's authority and capability for actual implementation of this proposal and of alternatives. These questions include the extent to which State or local governments should be required to perform functions contemplated by the proposal and the difficulties involved in Federal or State enforcement of the plan.

Extensive public hearings will be held on this and alternative proposals no sooner than 30 days from the date of this notice of proposed rule making. Dates, times, and places will be announced in a forthcoming issue of the FEDERAL REGISTER.

The Administrator's final promulgation of transportation controls for the South Coast Basin will be profoundly influenced by the comments and testimony he receives, as well as by the approvable strategies submitted by the State in mid-Februray as part of the State plan. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate to the Regional Administrator, EPA, Region IX, 100 California Street, San Francisco, CA 94111. All relevant comments received not later than March 23, 1973, will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours

at the EPA Region IX Office, and at locations to be announced in the Los Angeles area. The changes proposed by this notice with appropriate modification will be effective on January 22, 1973. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

Dated: January 15, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

It is proposed to amend Part 52 of the Chapter I, Title 40, of the Code of Federal Regulations as follows:

Subpart F—California

1. Section 52.229 is amended by adding paragraphs (b) through (j), as follows:

§ 52.229 Control strategy and regulations: Photochemical oxidants (hyrdocarbons), Metropolitan Los Angeles Intrastate Region.

* * * * *

(b) *Regulation for control of evaporative emissions.*
(1) For purposes of this paragraph:

(i) "Evaporative control device" means a device installed on a motor vehicle to prevent the escape of gasoline vapor from the gasoline tank and carburetor.

(ii) "Registered" as applied to a motor vehicle, means that such motor vehicle is duly licensed for general operation on public roads or highways by the appropriate agency of the Federal Government or by the State.

(2) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura,

and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be effective commencing on January 1, 1976.

(3) Prior to January 1, 1976, an evaporative control device of at least 85 percent efficiency which is approved by the Administrator shall be properly installed, in good working order, and in operation on all registered light-duty gasoline-powered vehicles of model years 1966 through 1969 and all registered heavy-duty gasoline vehicles of model years 1966 through 1972. Approved evaporative control devices shall be installed on a schedule determined by the Administrator.

(4) After January 1, 1976, the following shall apply in the areas specified in paragraph (b)(2) of this section:

(i) The State of California shall not register light-duty vehicles which do not comply with the provisions of paragraph (b)(3) of this section.

(ii) No owner of light-duty vehicles shall operate or allow the operation of such vehicles which do not comply with the provisions of paragraph (b)(3) of this section.

(c) *Regulation for gaseous fuel conversion.* (1) For purposes of this paragraph:

(i) "Fleet vehicle means any one of ten (10) or more light- and heavy-duty vehicles operated by the same person(s) or business and used principally in connection with the same occupation or related occupations.

(ii) "Gaseous fuel" means liquified or pressurized petroleum or natural gases which are used as fuel for light-duty vehicles.

(2) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this reglation shall be effective commencing on January 1, 1976.

(3) All registered gasoline-powered fleet vehicles of model years prior to 1975 shall be equipped for and operated on gaseous fuel by the effective date of this regulation. Conversion of such fleet vehicles for use of gaseous fuel shall be on a schedule determined by the Administrator.

(4) After January 1, 1975, the following shall apply in the areas specified in paragraph (c)(2) of this section:

(i) The State of California shall not register vehicles which do not comply with the provisions of paragraph (b)(3) of this section.

(ii) No owner of fleet vehicles shall operate or allow the operation of such vehicles which do not comply with the provisions of paragraph (c)(3) of this section.

(d) *Regulation for yearly inspection and maintenance.* (1) For purposes of this paragraph: "Inspection and maintenance" means a program to reduce emissions from in-use vehicles through identifying vehicles that need emissions control related maintenance and requiring that maintenance be performed.

(2) This regulation is applicable in those sections of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be effective commencing on January 1, 1975.

(3) All registered gasoline-powered light- and heavy-duty motor vehicles shall be inspected annually for emissions and, as necessary, maintained by the owner in order to pass the inspection. This shall be done by personnel, facilities and procedures which shall be proposed and promulgated by the Administrator.

(4) After January 1, 1975, the following shall apply in the areas specified in paragraph (d)(2) of this section:

(i) The State of California shall not register light-duty vehicles which do not comply with the provisions of

paragraph (d)(3) of this section and procedures promulgated pursuant thereto.

(ii) No owner of light-duty vehicles shall operate or allow the operation of such vehicles which do not comply with the provisions of paragraph (d)(3) of this section.

(e) *Regulation for oxidizing catalyst.* (1) For the purposes of this paragraph: "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) This regulation is applicable in those sections of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be effective commencing on January 1, 1975.

(3) All registered gasoline-powered light- and heavy-duty motor vehicles of model years 1966 through 1974, shall be equipped with an appropriate oxidizing catalyst exhaust retrofit in accordance with paragraph (e)(2) of this section, approved by the Administrator.

(4) After January 1, 1975, the following shall apply in the areas specified in paragraph (e)(2) of this section:

(i) The State of California shall not register light-duty vehicles which do not comply with the provisions of paragraph (e)(3) of this section.

(ii) No owner of light-duty vehicles shall operate or allow the operation of such vehicles which do not comply with the provisions of paragraph (e)(3) of this section.

(f) *Regulation for purchase of gasoline.* (1) For purposes of this paragraph:

(i) "Control period" means a portion of a calendar year in which gasoline sales are regulated.

(ii) "Retail outlet" means any service station, filling station, garage, store or other place of business at which gasoline is transferred directly to consumers in the regular course of business.

(2) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be in effect commencing May 1, 1975, and shall remain in effect through October 31, 1975. The regulation shall be effective in the same control periods during each calendar year thereafter, until such time as the Administrator determines the regulation to be no longer necessary for the attainment and maintenance of the national standard for photochemical oxidants (hydrocarbons).

(3) During the control periods, as specified in paragraph (f)(2) of this section, the sale of gasoline to retail outlets and to the owners and operators of motor vehicles shall be controlled by directions of the Administrator, EPA.

(4) The amount of gasoline to be controlled shall be determined by the Administrator no later than 30 days prior to the effective date of a control period. This determinaton shall be based on the hydrocarbon emission reduction required for the attainment and maintenance of the national standard for photochemical oxidants in Metropolitan Los Angeles Intrastate AQCR.

(g) *Volatile organic compound loading facilities.* (1) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirement of paragraph (g)(2) of this section shall be effective commencing July 1, 1973.

(2) No person shall load or allow the loading of volatile organic compounds having a vapor pressure of 1.5 pounds per square inch absolute or greater, under actual storage conditions, into any tank truck or trailer, railroad tank car, locomotive, aircraft, stationary storage tank with a capacity greater than 5 gallons from any loading facility unless such tank or loading facility

is equipped with a vapor collection and disposal system, or its equivalent, properly installed, in good working order, and in operation. Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor disposal system. A means shall be provided to prevent liquid organic compound drainage from the loading device when it is removed from the hatch, or to accomplish complete drainage before such removal. The vapor disposal portion of the system shall consist of one of the following:

(i) An absorber system or condensation system with a minimum recovery efficiency of 90 percent by weight of all the volatile organic compound vapors and gases entering such disposal system.

(ii) A vapor handling system which directs all vapors to a fuel gas system.

(iii) Other equipment of at least 90 percent efficiency, provided plans for such equipment are submitted to and approved by the Air Pollution Control Officer.

Intermediate storage vessels may be used prior to disposal of vapors under paragraph (g)(2) (i), (ii), or (iii), provided they are so designed as to prevent release of vapors at any time during use.

(3) Notwithstanding paragraph (g)(2) of this section, no person loading or allowing the loading of the above specified compounds in the above specified storage vessels from the above specified loading facilities, any of which were in existence on the effective date of this regulation, or in the process of being installed for use on said effective date, shall be subject to the provisions of paragraph (g)(2) of this section until January 1, 1974: *Provided, however,* That such person is hereby required to file on or before July 1, 1973, a compliance schedule with the Administrator showing how the person will bring his operation into compliance with paragraph (g)(2) of this section on or before January 1, 1974. Failure to file such compliance schedule or abide by its terms shall render the prohibition contained in paragraph (g)(2) of this section immediately applicable to such person on July 1, 1973, or on the date of said person's failure to abide by said compliance schedule, whichever is later.

(h) *Control of drycleaning solvent evaporation.* (1) For the purposes of this paragraph: "Drycleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(2) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be effective commencing on January 1, 1974.

(3) No person shall operate a drycleaning operation unless the uncontrolled organic emissions from such operation have been reduced at least 85 percent.

(4) Drycleaning operation emitting less than three (3) pounds per hour and less than 15 pounds per day are exempt from this regulation.

(5) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide.

(6) Drycleaning operations using solvents considered nonreactive by Rule 66 part (k) of the Los Angeles APCD current regulations are exempt from this regulation.

(i) *Degreasing operation.* (1) For the purposes of this paragraph: "Degreasing" means the operation of using an organic solvent as a surface cleaning agent prior to fabricating, surface coating, electroplating or any other process.

(2) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. The requirements of this regulation shall be effective commencing on January 1, 1974.

(3) No person shall use trichloroethylene (TEC) degreaser as a degreasing solvent.

(j) *Organic solvent usage: Federal regulation replacing parts of Rule 66 of Los Angeles, Orange, and San Bernardino Counties, Rule 36 of Santa Barbara County, Rule 69 of Riverside County, and Rule 66 of Ventura County.* (1) This regulation is applicable in those portions of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Santa Barbara Counties contained within the Metropolitan Los Angeles Intrastate Air Quality Control Region (AQCR) in the State of California. This regulation is effective immediately upon promulgation.

(2) Subparagraph i of Rule 66 of Los Angeles, Orange, and San Bernardino Counties, Rule 36 of Santa Barbara County, Rule 69 of Riverside County, and subparagraph 8 of Rule 66 of Ventura County as contained in the Local Air Pollution Control District Regulations for the South Coast Air Basin, Implementation Plan for the State of Caliofrnia, is amended by replacing subsubparagraph 5 (subsubparagraph e in the case of Ventura County), and adding in place thereof the following subparagraphs 5, 6, and 7 (e, f, and g in the case of Ventura County): [i The provisions of this rule shall not apply to:]

* * * * *

5. The use of any material, in any article, machine, equipment or other contrivance described in sections (a), (b), (c) or (d), if:

(i) The volatile content of such material consists only of water and organic solvents, and

(ii) The organic solvents comprise not more than 20 percent by volume of said volatile content, and

(iii) The volatile content is not photochemically reactive as defined in section (k), and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

6. The use of any material, in any article, machine, equipment or other contrivance described in sections (a), (b), (c), or (d), if:

(i) The organic solvent content of such material does not exceed 20 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in section (k), and

(iii) More than 50 percent by volume of such volatile material is evaporated before entering a chamber heated above ambient application temperature, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

7. The use of any material, in any article, machine, equipment or other contrivance described in sections (a), (b), (c), or (d), if:

(i) The organic solvent content of such material does not exceed 5 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in section (k), and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame.

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Transportation and/or Land Use Controls

On April 30, 1971, pursuant to section 109 of the Clean Air Act, as amended, the Administrator promulgated national primary and secondary ambient air quality standards for six pollutants. The act requires that the primary standards protect the public health with an adequate margin of safety, and that the secondary standards protect the public welfare from any known or anticipated adverse effects. Under section 110 of the act, States were required to prepare and submit to the Administrator plans for implementing the national ambient air standards in each air quality control region in the State. The Administrator published on May 31, 1972, his initial approvals and disapprovals of State implementation plans developed and submitted under these provisions of Federal law.

The presence in the ambient air of three of the pollutants for which control strategies were required to be submitted by States—carbon monoxide, hydrocarbons, and photochemical oxidants—is largely attributable to motor vehicles; consequently many States were unable to formulate, and submit, adequate control strategies that utilized only limitations on emissions from stationary sources. However, as the Administrator noted in his May 31 approval/disapproval of implementation plans, neither the States nor the Environmental Protection Agency had any practical experience that would permit the development of meaningful transportation control schemes or the prediction of their impact on air quality. States were advised that adoption of transportation control schemes could be deferred beyond the statutory deadline for submittal of implementation plans but those plans would have to define the degree of emission reduction to be achieved through transportation control measures and identify the measures being considered. States were required to submit adopted transportation control strategies no later than February 15, 1973.

Many States requested 2-year extensions pursuant to section 110(e) of the act for the attainment of the primary standards for these pollutants based on the unavailability of transportation control measures. The Administrator determined that, in fact, transportation control measures would not be available soon enough to permit attainment of the primary standards within the 3-year time period prescribed by the act; therefore, 2-year extensions were granted at the request of those States that had determined that transportation control measures would be necessary. In some cases, this meant that States were required to submit on February 15, 1973, transportation and/or land-use control measures that would achieve the standards by 1977. In other cases, the 2-year extension meant that certain States would not have to submit transportation control measures because the Federal motor vehicle control program (FMVCP) and/or stationary source control would be adequate to achieve the standards by 1977 without the application of any other transportation and/or land-use measures. In order to assist the States in the development of transportation control strategies, the Environmental Protection Agency conducted numerous studies and made their results available to the States. In addition, contract assistance was provided in developing the strategies for 14 of the affected regions, and the reports of these studies have been made available to all the States.

On January 31, 1973, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of *Natural Resources Defense Council Inc., et al.* v. *Environmental Protection Agency* (civil action No. 72-1522) and seven related cases, hereafter referred to as *NRDC* v.

EPA. It issued an order which held that the Clean Air Act does not permit the delay in submission of transportation control portions of State implementation plans until February 15, 1973, or permit the granting of extensions to mid-1977 for attainment of the national primary air standards where plans had not been submitted. The order required the Administrator to formally rescind through notice to the States and publication in the FEDERAL REGISTER the extension of time granted for submission of transportation and/or land-use control portions of implementation plans. It also required the Administrator to formally rescind in the same manner the extention granted to several States to delay implementation of their plans or portions thereof until May 31, 1977. The court ordered the Administrator to inform the States concerned that "all States that have not yet submitted an implemenation plan fully complying with the requirements of the Clean Air Act of 1970 must submit such a plan by April 15, 1973. That plan must satisfy each and every requirement of section 110(a)(2) (A)-(H) if it is to be approved by the Administrator. In particular, it must provide for the attainment of the primary standards as expeditiously as practicable but in no case later than May 31, 1975, * * *."

In accordance with this order, 22 States including the District of Columbia were notified by telegram on February 5, 1973, that any extensions granted because of the unavailability of transportation and/or land-use controls were canceled and that plans for the attainment and maintenance of the standards for these three pollutants would be required by April 15, 1973. A FEDERAL REGISTER notice was issued on March 20, 1973 (38 FR 7323), to complete the requirements of that court order by specifically amending the provisions of this part with regard to each of the States concerned. These amendments provided that every State which was granted an extension to achieve those primary standards and/or permitted to defer submittal of the transportation and/or land-use control strategies until February 15, 1973, would be required to submit no later than April 15, 1973, transportation and/or land-use controls which will show achievement of the standards by 1975. In addition to those States which were required to submit transportation and/or land-use control strategies on February 15, a number of other States which had regions that would not achieve the standard by 1975 but which had not been required to submit transportation control strategies because the FMVCP was thought capable of achieving the standards by 1977 were required to submit transportation control strategies on April 15. States that were not granted an extension but that had deficient plans were also required to submit transportation control strategies on April 15, 1973. Strategies adopted by the States must provide for attainment and maintenance of these standards by May 31, 1975. At the time of submission of these plans on April 15, the Governors of the States could request an extension up to 2 years for compliance with the provisions of these plans if the specific requirements of section 110(e) are satisfied by the State plan.

To date, 16 States including the District of Columbia have submitted plans. These plans have been reviewed by the Department of Transportation, as well as by the Environmental Protection Agency, and have also been made available for public review and comment. Based upon the comments received and the Agency's evaluation of the plans in light of pertinent legal requirements, the Administrator is taking action to approve or disapprove inadequate portions of these plans.

The approval/disapproval decisions are based on a detailed evaluation of plans submitted by the States. Criteria for this evaluation include adequacy of control strategies, control plan adaption [sic] and submission procedures, accuracy of air quality data and emissions inventories, extension request considerations, provisions for air quality and source surveillance, review of legal authority, adequacy of resources, and provisions for intergovernmental cooperation.

Where the Administrator disapproves a State plan or portion thereof, or where a State fails to submit an implementation plan or portions thereof, the Administrator is required, under section 110(c) of the act, to propose and subsequently promulgate regulations setting forth a

substitute implementation plan or portions thereof. Where regulatory portions of a State plan, including control strategies and related rules and regulations, are disapproved or were not submitted, regulations setting forth substitute portions will be proposed and promulgated. When disapproved portions are of a non-regulatory nature, e.g., air quality surveillance, resources, and intergovernmental cooperation, and therefore are not susceptible to correction through promulgation of regulations by the Administrator, detailed comments will be included in the evaluation report; in such cases, the Environmental Protection Agency will work with the States to correct the deficiencies.

To the extent possible, the Administrator's evaluation of State plans reflects the latest information submitted by the States. In the interest of giving States every opportunity to bring their implementation plans into full compliance with the act and 40 CFR, part 51, the Environmental Protection Agency has notified States that modifications submitted after the deadline for submittal of State plans would be accepted and considered provided that such modifications were made and submitted in accordance with the requirements of 40 CFR, part 51. Accordingly, many States have been, and still are, making and submitting modifications of their implementation plans. Where such modifications were not received in time to affect the Administrator's approval or disapproval today of a State plan or portion thereof, appropriate changes to this part will be published as soon as the Administrator's evaluation of such modifications has been completed.

The act directs the Administrator to require a State to revise its implementation plan whenever he finds that it is substantially inadequate for attainment and maintenance of a national standard. In accordance with the statutory mandate, the Environmental Protection Agency will make a continuing evaluation of the State plans and will, as necessary, call upon the States to make revisions.

A discussion of the available transportation control alternatives, and the Administrator's approvals and disapprovals, is set forth below. A more detailed description of disapproved portions, together with an explanation of the basis for disapproval, will be provided to the States. Copies of these evaluation reports are available for public inspection at the Freedom of Information Center, Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and in the Agency's regional offices.

Transportation Control Alternatives

Transportation control plans provide for reductions in carbon monoxide and hydrocarbon levels required beyond the reductions provided by the Federal motor vehicle emissions control program and stationary source regulations set forth in the previously approved State implementation plans. These reductions are to be accomplished through the implementation of the transportation control alternatives discussed below. The appropriateness of a particular alternative is determined by the pollutant controlled (carbon monoxide or oxidant) as well as by the characteristics of the specific air quality control region such as topography, demography, climatology and institutional arrangements.

The control of carbon monoxide is influenced by its lack of reactivity and its localized dispersion characteristics. High ambient carbon monoxide concentrations can be decreased by reducing the density of emissions in a specific area of interest. In addition to control measures that would reduce the emission potential of the individual vehicle, a variety of traffic control measures can be utilized to reduce ambient carbon monoxide levels in high concentration areas. Three general types of traffic controls have been considered—measures to improve traffic flow, programs to reduce total vehicle miles of travel (VMT), and programs to shift traffic away from high concentration areas. Depending upon the local situation, all three can be effective in reducing carbon

monoxide levels. However, traffic flow improvements must often be accompanied by restrictions that will prevent the latent travel demand from recongesting traffic arteries. Traffic flow can be improved through various traffic engineering programs as well as through staggered work hours. Strategies to reduce total vehicle miles of travel include auto-free zones, increased parking fees, 4-day workweeks, and improved public transit. Carbon monoxide levels can in many cases be reduced by the temporal or spatial redistribution of the emissions, which is especially applicable to localized high ambient concentrations such as occur in many central business districts (CBD). Reduction of air quality in the surrounding area must be considered when spatial redistribution is utilized as a control measure.

Photochemical oxidant, primarily ozone, is a secondary pollutant; it results from the reaction of two primary pollutants (hydrocarbons and nitrogen oxides) in the presence of sunlight. As such, it differs from carbon monoxide in that there exists a lag time between the emissions of the primary pollutants and the formation of the secondary pollutant; therefore, the reduction of oxidant concentrations depends upon reduction in precursor (primary pollutant) emissions over a much wider area than required for the reduction of primary pollutant concentrations. The extent of the reduction in hydrocarbon emissions required to meet the air quality standards for oxidants, as determined by statistical evaluation of observed data, is specified in 40 CFR, part 51, appendix J. Control measures such as inspection/maintenance, retrofit, increased parking fees and road tolls, 4-day workweeks, car pooling, improved mass transit, "smog taxes" on automobiles and gasoline, gasoline rationing, etc. can be used to reduce hydrocarbon emissions over a wide area. Traffic flow measures or controls that redistribute the emissions over time or space are not considered effective in reducing photochemical oxidants.

Measures which reduce both carbon monoxide and hydrocarbon emissions from vehicles include inspection/maintenance programs and vehicle retrofit devices. Esti-

mates of the effectiveness of these measures were provided in a notice of proposed rulemaking published January 12, 1973 (38 FR 1467) and promulgated in final form on June 8, 1973 (38 FR 15193). Alternative transportation control measures contained in State plans such as improvements in mass transportation, car pooling, methods of gaining a general reduction in vehicle miles traveled, traffic flow improvements, inspection and maintenance measures as well as retrofit programs, are discussed in subsequent sections.

Mass Transit

Since automobiles are the major source of carbon monoxide and hydrocarbon emissions in most cities, it would be desirable from an air quality standpoint if many trips presently made by auto could be diverted to other modes of travel.

It should be pointed out that any mass transit improvements requiring major construction, such as the extension of existing fixed-route systems or the building of new systems, cannot be completed by 1975 or 1977 unless such construction is already underway. Accordingly, for purposes of achieving the carbon monoxide and oxidant air quality standards by the statutory deadlines, mass transit strategies must focus on alternative systems, primarily bus transit, and on immediate improvements in existing systems. Much can be done to improve existing fixed-route and bus systems in order to increase their attractiveness to the traveling public. Such improvements could include modifications in schedules, routes, and fare structures; preferential treatment facilities for bus transit, such as exclusive bus lanes; park-and-ride facilities; measures to increase the comfort and security of passengers; and improved public information and marketing programs.

Where mass transit improvements are not sufficient to significantly reduce auto travel, as is generally the case, disincentives to, and restraints on, auto travel may be needed. Economic disincentives such as higher parking charges and tolls, higher gasoline taxes, and higher fees

for auto registration might be used for this purpose. Alternate modes of transportation must be available concurrent with the imposition of vehicle restraints in order to retain mobility for the public.

Techniques that improve mass transit service and simultaneously restrain the automobile may be effective in diverting auto riders to mass transit. Provision for exclusive lanes for buses and carpools which simultaneously reduce road capacity available to the auto is an example. Other techniques would include priority metering for buses on expressway ramps, bus-priority signalization, and auto-free zones.

Many States have proposed mass transit improvements as part of their programs to meet ambient air quality standards. In some cases, States have made excessive or unsubstantiated claims of emission reductions resulting from mass transit improvements. In these cases, the Administrator has exercised his judgment in assigning different emission reductions. As in the case of traffic flow improvements, such an estimate has not in itself resulted in disapproval of a control strategy where the control strategy provided sufficient margin or included adequate contingency measures.

Car-Pooling

Increasing the average occupancy rate of automobiles is a conceivable method of reducing vehicles miles traveled (and thus automotive air pollutant emission) without unduly restricting personal mobility. Experimental programs have shown that incentive measures such as express lanes, reduced tolls, and preferential parking can lead to the formation of car pools. Innovative carpool locator and information systems can also be used to assist in the formation of groups of individuals who live and work near each other and who have compatible work schedules. These programs will allow trip making while reducing air pollution emissions and the drain on natural resources.

Reduction in VMT

Measures such as mass transit, car pools, bus lanes, parking restrictions, increased bridge tools, gas rationing, and others are designed to reduce the vehicle miles traveled (VMT). The Administrator believes that some reduction in VMT can be reasonably achieved by 1975 by employing available transportation control strategies. Application for time extensions to meet standards therefore cannot be granted until some reduction in VMT can be shown by control strategies submitted in state plans.

Information available on possible VMT reductions is incomplete. It is as true today as it was a year ago that states have had practically no experience with transportation control measures as a means of dealing with air quality problems. Aside from the Nation's experience during World War II (gasoline rationing), no one knows what the public response to significant measures for reducing VMT will be. The studies that have been made on this point are inadequate and are necessarily hypothetical until the measures have actually been put into effect. Public attitudes in major urban areas do appear to be changing, however, and are becoming less favorable to the continued use of automobiles on the present scale.

Finally, even the ability of different modes of transportation to absorb the demand for trips that would be created by a significant VMI [sic] reduction will vary greatly with the individual characteristics of the city involved. No firm projection of what alternative transportation is available can be made without a detailed traffic study of the individual region, and, for the most part, such studies have not been made.

It is clear, however, that the authors of the clean air amendments of 1970 anticipated that substantial VMT reductions might be necessary to achieve the standards. The Senate report on the act states that "until the vehicle population is largely made up of cars that meet the 1975-76 standards, as much as 75 percent of the

traffic may have to be restricted in certain large metropolitan areas if health standards are to be achieved within the time required by this bill."

It is also clear from the January 31, 1973, court of appeals decision that if VMT reduction measures are reasonably available by 1975, and if the standards cannot be achieved without them, they must be put into effect. This is true even though the restrictions may be necessary only for a few years until cleaner cars come into more widespread use. Against this background, the Administrator has reexamined the question of VMT reduction and has concluded that a reduction in VMT in 1975 is a feasible and necessary measure for many regions.

Though some reduction in the use of private automobiles may be expected simply from the use of measures designed to increase the attractiveness of other means of transportation, VMT reductions can only be assured through the use of some form of restraint or disincentives to vehicle usage.

A measure cannot be considered "reasonably available," if putting it into effect would cause severe economic and social disruption. Although some reduction in personal travel could certainly be absorbed without such disruption, achievement of a significant VMT reduction will require that the majority of the travel displaced from single-passenger automobiles be absorbed by other modes of transportation such as car pools and public transit, or by walking or bicycling.

The only significant expansion of public transit facilities that can be accomplished by 1975 except where construction is already underway is the upgrading and physical expansion of bus services. Much however, can be done in this regard. Scheduling and service can be improved and optimized. Individual lanes of freeways and other major roads can be set-aside for the exclusive use of buses. Significant numbers of new buses can be purchased and put into service by then. According to Department of Transportation figures, 2,500 transit buses were sold in this country in 1972, but the transit

industry's production capacity is projected to be more than 6,000 buses a year by 1975.

Sufficient alternative transportation capacity appears to be available now, or will be available by 1975, to allow significant VMT reductions (perhaps 10 to 15 percent) by 1975 in most of the Nation's cities. Further significant reductions should be possible by 1977. Alternative transportation capacity exists partly in present mass transit facilities, or can be created through the expansion of bus service. In part it exists in the possibility that many short trips now made by car could be made by bicycle or on foot.

A major part of the transportation demand created by VMT reductions can be absorbed by car pools. Private automobiles, which are designed to carry four to six persons, carry an average of one and one-half persons per trip in major urban areas, and thus represent the largest unused pool of transportation capacity currently available. The Administrator cannot directly require the use of car pools. It can be expected, however, that as measures to make the use of private automobiles less convenient are imposed, increased reliance on car pools will develop naturally as a matter of private initiative.

VMT reduction measures which the Administrator may propose will vary according to the pollution problem of the individual region. Three major control measures appear to be particularly effective for VMT reduction. The first is the use of parking restrictions in central business districts (CBD). In addition to helping solve the problem of localized carbon monoxide pollution in these areas, as noted above, such measures can be expected to discourage auto trips to CBD's by making it more difficult to park the car at the end of the trip, and thus encouraging a shift to alternate modes of transportation. The second is the conversion of one or more lanes of freeways and major streets to the exclusive use of buses or car pools or both. This can be expected to encourage the use of the favored modes of transportation by reducing traveltime and to discourage the use

of private automobiles by reducing the amount of road space available to them. The third is the imposition of gasoline supply limitation which might be no more than a limit on the growth in gasoline consumption. This can be expected to further reduce VMT. In some regions, this will be made necessary by the legal requirement to propose a plan theoretically capable of meeting the standards by 1975, or by 1977 at the latest.

Traffic Flow Improvements

In central business districts, traffic speeds are low during most of the day. Various traffic flow improvement measures, including operational improvements of existing roads, have been proposed by many States on the basis that the resulting higher traffic speeds will substantially reduce pollutant emissions.

There are indications that the resulting improvement in air quality will be short-lived, since street improvements tend to induce additional traffic. With higher traffic volumes, total emissions would increase. Within a year or two the emissions may in fact be at higher levels than if the traffic flow improvement measures had not been implemented at all.

It may be possible in some areas to counteract the induced traffic by appropriate measures; but, in general, the States have not addressed themselves directly to this problem. Where the States have considered and proposed such countermeasures, they have been proposed as separate control measures for which additional emission reductions have been claimed. The Administrator recognizes that it is not easy to solve the problem of induced traffic; however, failure to recognize the problem gives a false picture of the results of the traffic flow improvements, and failure to identify the major elements of the problem could result in inadequate monitoring and in inadequate planning of counter and contingency measures.

Inspection/Maintenance

Pollutant emissions from in-use vehicles can be reduced by ensuring that engines and emission control devices are maintained in good operating condition. Such reductions can be achieved through periodic inspections of in-use vehicles and the repair of vehicles that fail to meet inspection standards. The degree of emission reduction obtained will depend on the frequency of inspection and the particular inspection standards used. The total emission reduction achievable through a particular inspection measure will be accomplished only after the vehicles in a particular area have completed the inspection/maintenance cycle.

States have proposed three principal types of annual inspection programs: Idle emission tests, loaded emission tests, and inspection and maintenance. The Administrator has evaluated the feasibility of these systems and the time generally required to implement the measures and complete one inspection cycle. An idle-test program (i.e., tests with transmissions in neutral) can be fully implemented by May 31, 1975. A loaded-test program (i.e., tests with the vehicle placed on a dynamometer which is programmed to simulate the actual driving conditions) leads to somewhat greater emission reductions, but, due to the equipment needed, may require up to 6 additional months for implementation (December 1, 1975). The implementation completion dates for these tests are subject to adjustment based on an evaluation of results from current programs, and availability of facilities for safety inspection, and licensed garages.

The Administrator does not currently believe that implementation of heavy-duty vehicle maintenance/inspection programs can be assured, even by 1977. Currently a successful inspection/maintenance approach for heavy-duty vehicles has not been identified. Accordingly, provisions for heavy-duty vehicle inspection/maintenance have only been considered acceptable in the New York City transportation control plan in view of the city's

continuing program to develop and test heavy-duty retrofits.

Most States have not yet developed detailed plans for implementation of inspection/maintenance programs. Implementation will require obtaining the necessary legal authority; promulgating the required regulations specifying appropriate emission or other performance standards and testing procedures; training garage mechanics; licensing garages where necessary or appropriate; and training the State's supervisory manpower.

Retrofit Control Systems

Some States have proposed that retrofit emission control systems be required for light- and/or heavy-duty vehicles registered in those areas of the State having pollution that significantly affects a particular air quality control region. The retrofit devices which have been proposed include vacuum spark advance disconnect (VSAD), air bleed, catalysts, and heavy duty retrofit catalysts.

These devices are currently in various stages of development and use. For any retrofit strategy to be effectively implemented, the affected State must insure that the devices are in fact capable of achieving the claimed emission reductions; that the devices do not adversely affect the safety of the automobile; that the devices will be available in sufficient quantity at convenient places; that there are sufficient trained mechanics; that the devices are being properly installed; and, in the case of catalytic devices, that leaded gasoline will not be used and that sufficient quantities of unleaded gasoline of appropriate octane number will be available. These are not easy tasks, and the States that have proposed retrofit strategies may have difficulty implementing their programs.

In light of these difficulties, the Administrator has extensively evaluated the minimum time frame which would be generally required to complete the implementation of the particular retrofit strategies. As a result of this evaluation, the Administrator determined that vacuum spark disconnect strategies could be implemented by

May 31, 1975, but that implementation of an air bleed control strategy could not be accomplished before May 31, 1976, or light-duty catalytic retrofit strategies before May 31, 1977. It was further determined that implementation of the heavy-duty catalytic retrofit program cannot be assured, even by May 31, 1977. The general implementation time frame determinations noted above are reflected in the agency's approval/disapproval decisions.

The Administrator, however, also considered the regions' particular ability to implement a designated strategy. For example, the heavy-duty catalytic retrofit strategy was approved for the plan submitted by the State of New York for New York City. The approval was based upon the existence of the city's ongoing program to develop heavy-duty catalytic retrofit devices.

In general, retrofit systems that are capable of high reductions in emissions also involve higher costs, including both installed cost and operating cost. Since a retrofit program would involve large numbers of vehicles, the total cost of such a program can be expected to be large. Accordingly, the Administrator, in his regulation pertaining to the preparation, adoption, and submittal of implementation plans (40 CFR 51.2), has encouraged the States to consider the socio-economic effects which may accompany retrofit control strategies.

Economic and Social Impact

The regulations promulgated by the Administrator in August 1971, setting forth the requirements for preparation, adoption, and submittal of State implementation plans included a stipulation that the requirements should not be construed "to encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan * * *". In this context, an assessment of the economic and social impacts of the transportation control strategies proposed by the States is being completed.

Each element of a transportation control strategy involves commitments of manpower, facilities, equipment, and material which involve direct costs that can be quantified and budgeted. It should be noted that private citizens, especially the car-owning population, will probably be more directly affected (in terms of cost) by these control measures than by typical stationary source control measures.

There are also social impacts which occur as a result of the implementation of transportation control measures. These impacts take the form of non-monetary costs attributed to control measures, such as inconvenience and loss of time and opportunity. Control measures which affect personal mobility, choice of travel mode, and regional accessibility also induce monetary social costs, although quantification of these costs is difficult.

Society will be affected by the implementation of transportation control measures in several specific ways. An individual will incur direct personal costs when bringing his vehicle into compliance with specific strategies. A decrease in or inhibition of the mobility of the individual may affect employment and retail business operations and sales, as well as recreational activities and facilities. Public service and enforcement activities will require expanded capabilities and resources as a result of implementation of the transportation control strategies. In addition, there will be measurable impacts on raw materials and natural resources, such as the energy supply.

The most significant impact, however, will result from measures which directly affect the individual's mobility and life style and necessitate changes in the economic structure of the community. The severity of this impact in each urban area depends on the degree and magnitude of the control measures proposed; the extent to which vehicle usage is restricted; the manner in which direct costs of abatement are financed; and the degree to which incentives are provided to ameliorate the effects of the control measures.

Extension Requests

Section 110(e) of the Clean Air Act provides that an extension of up to 2 years in the time allotted a State for achieving any given primary standard in any air quality control region may be granted only if the Governor of a State requests it and establishes the following to the satisfaction of EPA: (1) He must have presented a plan which is theoretically able to achieve the standards by the 1975 deadline; (2) he must show that certain elements of the control strategies necessary to control certain sources will not be available by 1975; (3) he must show that there are no alternatives to those essential elements in (2) above that will not be available by 1975; (4) he must demonstrate that the plan provides for the application, as soon as is practicable, of all reasonably available measures for reducing emissions from these sources; and (5) he must show that all strategies in the plan for the control of other sources will be applied by May 31, 1975. The January 31, 1973, Court of Appeals decision placed particular stress on the requirement for a careful examination of extension requests. An extension, if granted, applies only to those specific measures for which more time is required. All other measures in the plan must be fully implemented by May 31, 1975, or sooner as provided in the plan.

If the State has not met the conditions of section 110(e), the Administrator must disapprove the extension request and propose a substitute plan. If it becomes apparent either that the original denial was in error or that the best achievable plan still will not meet the standards in 1975, the Environmental Protection Agency may grant itself an extension of time, if justified by the facts, up to a 2-year maximum. In granting itself the extension, the Environmental Protection Agency is bound by the same legal standards as those that apply to State requests. In particular, no such extension will be legally valid unless the requirements of section 110(e) have been met.

Public Hearings and Comments

All States were required, prior to the adoption of any plan or revision thereof, to conduct one or more public hearings on such plan, compliance schedule, or revision. Notice of a public hearing was to be given at least 30 days prior to the date of such hearing. Notice was to be given by prominent advertisement, in the region affected, of the date, time, and place of such hearing. The proposed plan or revision was to be available for public inspection at the time of announcement of the notice.

Comments were received from the general public, private industry and such organizations as Natural Resources Defense Council. Typical comments were as follows: (1) Plans did not provide necessary assurance that the State will furnish the required resources to implement the control strategies; (2) plans did not provide an adequate description of the enforcement methods, administrative procedures, monitoring systems, and surveillance programs necessary for plan implementation; (3) plans made unjustified and legally insufficient request for extensions of the deadline for attainment of the primary standards; and (4) plans did not make provision for intergovernmental cooperation in the implementation of a strategy.

These and other comments are addressed in the preamble to the specific State plans and in the evaluation reports written for each State plan.

Future State Action Required

As indicated in the March 20, 1973, notice, the complete formulation of transportation control strategies requires three steps. The first step was completed with submittal on April 15, 1973, the State control strategies, as defined in 40 CFR 51.1(n), which are proposed to be put into effect on a specified timetable. A listing of possible transportation control strategies does not meet this requirement, even if it is coupled with general assurances that one or more of the measures described will be put into effect if necessary. To be acceptable, a plan must make choices and indicate specifically what will be

done. In addition, a plan must contain the specified air quality data and projections of strategy impact, and must meet other requirements of part 51.

Second, States must submit evidence that they will possess the legal authority by July 30, 1973, required to carry out the plan. In those instances where the legislature is still in session, or where the Governor has indicated he will call a special session of the legislature to consider transportation controls, transportation strategies may be approved this date regarding the requirements of § 51.11 (a), (c), (d), (e), and (f) calling for legal authority, since the Agency has previously stated that necessary legislative authority may be submitted by July 30, 1973. To the extent that legal authority is not shown to be available at that time, the affected elements of the plans will be disapproved, and the Administrator will promulgate substitute provisions unless the State can show that the authority is not currently needed, that it will be obtained before it is needed, and that no loss of time in meeting the standards will result from waiting to obtain it.

Detailed regulations for implementing the control strategy must be adopted by December 30, 1973. This does not defer the necessity for the States to choose their strategies and make firm commitments to put them into effect. It merely means that the detailed procedures involved can be approved later. If the plan did not provide adequate assurance that this later stage would be essentially procedural, so that substantial difficulties would not be likely to arise then, the plan was not approved.

Federal Motor Vehicle Emmission Program

The April 11, 1973, decision of the Administrator (38 FR 10317) granting certain suspensions of the 1975 auto emission standards to the domestic auto manufacturers will, to some degree, affect the transportation control plans. It is estimated that the interim motor vehicle standards specified by the Administrator will increase the vehicle pollutant emissions in 1975 by 2 to 4

percent of that anticipated before the 1-year extension was granted to the automobile manufacturers. Because of the closeness of the date of the Administrator's decision and the April 15, 1973, deadline for plan submittal, only a few of the plans accounted for the effect of the interim standards. For those plans that are found to be inadequate, additional measures will be proposed by the State or the Environmental Protection Agency to compensate for the 1-year extension.

The effects of these and other factors will be kept under continual review and the States will be required, at appropriate times, to suitably revise their plans in accordance with the revision procedures prescribed by the Clean Air Act and 40 CFR 51.6.

Summary of Approval/Disapproval Actions

The Court of Appeals order required that transportation control plans be submitted by 21 States and the District of Columbia. Though not included in the court order, the Commonwealth of Virginia has also voluntarily submitted a transportation control strategy. Approval/disapproval actions today cover 43 separate air quality control regions or portions of regions found in these 23 jurisdictions. The actions taken in these 43 separate cases have been categorized as shown in the following table. This table identifies Air Quality Control regions (AQCR) or subregions with the name of a key metropolitan area associated with the region. For example, the Northern Alaska intrastate is designated Fairbanks and the Texas portion of the El Paso-Las Cruces-Alamogordo interstate region is designated El Paso.

Approval/Disapproval Summary

	Regions [1]
Plans fully approved now:	
Alabama, Birmingham, Mobile	2
New York, NYC, Rochester, Syracuse	3
	5
Plans fully approvable after expiration of comment period:	
Kansas, Kansas City	1
Louisiana, Baton Rouge	1
Missouri, Kansas City	1
	3
	8
Plans with generally approvable control strategy but procedurally deficient:	
Arizona, Phoenix	
D.C., National Capital	
Illinois, Chicago	
Oregon, Portland	
Pennsylvania, Philadelphia, Pittsburgh	
Utah, Salt Lake City	
Virginia, National Capital	
Washington, Seattle, Spokane	
	10
Plans submitted too late to evaluate:	
Colorado, Denver	1
Inadequate plan submitted—significant EPA promulgation anticipated:	
Maryland, National Capital, Baltimore	
Texas, El Paso, Austin/Waco, Corpus Christi, Houston/Galveston, San Antonio, Beaumont, Dallas/Fort Worth	
	9

[1] Air Quality Control Region or portion of Region.

APPROVAL/DISAPPROVAL SUMMARY—Continued

	Regions [1]
No plan submitted—Expected in July; significant EPA proposals needed:	
California, San Francisco, San Diego, Sacramento, San Joaquin, Indio	
Indiana, Indianapolis	
Massachusetts, Boston, Springfield	
Minnesota, Minneapolis/St. Paul	
New Jersey, Newark, Camden/Trenton	
Ohio, Cincinnati, Dayton, Toledo	
Alaska, Fairbanks	
	15
Total	43

[1] Air Quality Control Region or portion of Region.

A limited number of State plans are being completely approved today. However, the Administrator has approved portions of most plans submitted and recognizes the commitment and extensive effort put forth by many States in the development of these plans. He is confident that many States will correct the deficiencies and have fully approvable plans in the near future. Transportation control plans for Alabama and New York are completely approved. Based on evaluation of recent air quality measurements and updated emission inventories, the plan submissions indicate that control measures currently contained in three of the five regions in these States will achieve the standards by May 31, 1975. These regions are the Metropolitan Birmingham intrastate region in Alabama, the Alabama portion of the Mobile (Alabama)-Pensacola-Panama City (Florida)-Southern Mississippi intrastate region, and the central New York region. The two remaining regions in New York State require transportation controls and have submitted approvable plans. The Genesee-Finger Lakes intrastate region requires transportation controls to achieve the standards for photochemical oxidants (hydrocarbons) by May 31, 1975. The New York portion of the New Jersey-New York-Connecticut interstate region, which requires extensive transportation controls, has been granted an extension until December 31, 1976, to achieve the standards for photochemical oxidants and carbon monoxide.

The Administrator is required to disapprove three plans today that have not been available for public comment a full 21 days. It should be noted, however, that the Agency currently expects to approve these plans provided changes are not required in response to public comments. The portions of regions covered by these three plans are the Louisiana portion of the southern Louisiana-Southeast Texas interstate region, the Kansas portion of the Metropolitan Kansas City interstate region, and the Missouri portion of the Metropolitan Kansas City interstate region.

Ten plans submitted by eight States and the District of Columbia cannot be fully approvable [sic] today but contain strategies which either will achieve ambient air quality standards or require the addition or modification of several control measures to achieve standards. In some cases, disapproval today results from deficiencies in meeting requirements such as adequate legal and enforcement authority, monitoring and surveillance procedures, and timetables for implementation and enforcement. These plans are the result of extensive efforts by States. The Environmental Protection Agency is continuing to work with each State to revise State plans as necessary for them to be fully approvable.

Colorado recently submitted a detailed plan for Denver. This plan was submitted too late for the Administrator to complete his evaluation. In addition, the plan has not been available for public comment for the required time period. Maryland and Texas submitted plans which are considered to have serious deficiencies in control strategies proposed to meet standards. It is expected that significant control measures will be proposed by the Administrator to make these plans acceptable.

Transportation control plans for 15 regions or portions of regions have been disapproved because no transportation control measures have been submitted by the appropriate States to the Administrator.

A discussion of specific actions relevant to each State is given below.

ALABAMA

The State of Alabama was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the Metropolitan Birmingham intrastate region, and for photochemical oxidants (hydrocarbons) in Alabama's portion of the Mobile (Alabama)-Pensacola-Panama City (Florida)-Southern Mississippi interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Alabama was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975. On April 24, 1973, the State of Alabama submitted a nonregulatory plan revision. This revision was reviewed and evaluated by the Administrator pursuant to 40 CFR part 51. It has been determined after review that the revision submitted adequately insures that the Alabama plan meets the requirements of section 110. A summary of this review is contained in "Evaluation Report on the Transportation Control Study for the State of Alabama," which is available both at the Freedom of Information Center, EPA, room 329 401 M Street SW., Washington, D.C. 20460, and at the Office of Public Affairs, EPA Region IV, 1421 Peachtree Street NE., Atlanta, Ga. 30309.

The approved implementation plan provisions were adopted in accordance with procedural requirements of State and Federal law. No public hearings on this revision were held by the State of Alabama. However, since the revision submitted was a nonregulatory revision, no hearing was required under 40 CFR 51.6. There were two respondents to the FEDERAL REGISTER of May

4, 1973 (39 FR 11113), "Notice of Opportunity for Public Comment on Proposed Transportation and/or Land Use Control Strategies." A major petroleum company commented on gasoline-loading requirements already adopted by the State of Alabama. The Natural Resources Defense Council challenged as inflated the Alabama figures indicating that the standards would be achieved on schedule without transportation controls through the increasing stringency of controls on new cars. Although, as noted in the evaluation report, EPA has not accepted the State figures in full, the figures even as adjusted indicate in our best judgment that the standards will be met on schedule.

ALASKA

In accordance with *NRDC* v. *EPA*, Alaska was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the carbon monoxide standards in the Northern Alaska intrastate region by May 31, 1975.

The State of Alaska has neither held public hearings to consider alternate transportation and land use control strategies as part of their implementation plan for the region, nor has the State indicated that it will submit a plan in compliance with the March 20 FEDERAL REGISTER requirements.

As a result of Alaska's unresponsiveness to the Administrator's order of March 20, 1973, the Administrator must at this time indicate that deficiency and list the resultant exemptions [sic] to the approvability of the Alaska plan for the Northern Alaska intrastate region.

Should the State of Alaska submit its required plan, the Environmental Protection Agency will acknowledge formal receipt of the plan through the FEDERAL REGISTER and will provide an opportunity for the public to comment on the plan. All comments submitted will be considered in the plan review. The Environmental Protection Agency will then revise this disapproval notice as is deemed appropriate.

ARIZONA

The State of Arizona was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment and maintenance of the carbon monoxide standards in the Phoenix-Tucson intrastate region.

In accordance with *NRDC* v. *Environmental Protection Agency*, this extension was rescinded, and Arizona was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975. In addition, Arizona was directed to submit a transportation strategy for photochemical oxidants (hydrocarbons) for the Phoenix-Tucson intrastate region.

The State of Arizona held a public hearing on the proposed plan on January 25, 1973. At this hearing 27 persons testified, including representatives of 9 conservation groups and 3 industries. General support and endorsement were voiced for inspection/maintenance and retrofit as immediate solutions, but most testimony indicated that these strategies would be inadequate as permanent solutions. There was general support for long-term strategies such as mass transit, controlled growth, and land-use planning.

EPA received the plan on April 11, 1973, and published notice of its arrival in the FEDERAL REGISTER, 38 FR 10119 (Apr. 24, 1973), and invited comments.

One comment submitted criticized the use of a limited data base and lack of contingency measures in the plan and objected to the high cost of retrofits. Comments received from three oil companies also objected to catalytic retrofits. In addition, the Natural Resources Defense Council submitted comments that challenged as too high the estimates of emission reductions to be achieved from retrofit and the establishment of an inspection and maintenance system; the general lack of regulatory language and choice of strategies; and the absence of VMT reduction measures. The feasibility of the proposed retrofit program was also questioned.

After reviewing the plan, the Administrator concluded that, if only the emission control on bulk tank farms and service station underground storage tanks were implemented as proposed, the national standards for photochemical oxidants could be attained by May 31, 1975, but that a 39-percent VMT reduction in addition to all the proposed strategies would be required in order to attain the standards for carbon monoxide by the 1975 deadline. However, the State's implementation dates for several of the proposed strategies are not acceptable.

The Administrator has determined that catalytic retrofits cannot be fully implemented before mid-1977, and that air-bleed retrofits cannot be fully implemented before mid-1976. In the State plan it was indicated that the proposed loaded inspection system cannot be fully implemented before mid-1976, even though the State already has an ongoing program established. EPA agrees with this assessment. Therefore, although these strategies are technically feasible, the Administrator cannot approve them for the Arizona plan because they will not be available to the State for use in attaining the national standards by May 31, 1975. In addition, the proposed retrofit and inspection strategies for heavy duty vehicles cannot be approved because these strategies are not considered implementable even by mid-1977.

A request by the Governor for an 18-month extension for both pollutants was included with Arizona's plan. However, the State failed to satisfy the justification criteria published in the FEDERAL REGISTER (36 FR 15493) for extension requests, namely, the plan contains no VMT reduction measures to be implemented during the extension period. In the judgment of the Administrator, sufficient alternative transportation capacity is presently or potentially available to achieve a 10- to 15-percent VMT reduction by 1975. Therefore, the Administrator cannot grant the extension. Nevertheless, it should be noted that, based on the above determinations, an 18-month extension would not be sufficient for implementing all the strategies needed for attainment of the standards.

The Administrator recognizes the sincere efforts of Arizona to develop technically sound and workable transportation control strategies. In order to realize its objective, the Administrator encourages the State to investigate the availability of strategies other than those involving heavy duty vehicles, and to submit an adequately documented justification for an extension of the attainment dates for the carbon monoxide standards.

CALIFORNIA

The State of California was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the standards for oxidants (hydrocarbons) in the San Francisco Bay Area, Sacramento Valley, and Southeast Desert intrastate region, and for carbon monoxide in the Sacramento Valley intrastate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded and California was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

In addition, California was directed to submit a transportation strategy for photochemical oxidants (hydrocarbons) in the San Diego and San Joaquin Valley intrastate region and for carbon monoxide in the San Francisco Bay Area, San Diego, and San Joaquin Valley intrastate region. This directive did not include the Metropolitan Los Angeles intrastate region, which was already the subject of separate EPA rulemaking at that time.

Because the court order handed down in *NRDC* v. *EPA* required the Administrator to approve or disapprove State plans within 2 months after the date required for the submission of the plan, the Administrator is disapproving those portions of the California plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is based solely upon the lack of timely submittal of California's plan. The Environmental Protection Agency will, when the plan is

received, acknowledge its receipt in the FEDERAL REGISTER, and will provide an opportunity for the public to comment on the plan. After evaluation of the plan that is to be submitted by California, and consideration of all comments, this notice will be revised accordingly.

COLORADO

The State of Colorado was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the standards for photochemical oxidants and carbon monoxide in the Metropolitan Denver Intrastate Region. In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Colorado was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975. The State of Colorado held public hearings on its plan on January 19, 1973, and ultimately submitted the plan on May 31, 1973.

The court order required the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan. Further, the Administrator must provide a period for public comment after receiving the plan and prior to publication of approval/disapproval notice in the FEDERAL REGISTER. Accordingly, the Administrator must disapprove those portions of the Colorado plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is based solely upon lack of timely submittal of the required plan and is not meant to reflect on the content of the submitted plan.

The Environmental Protection Agency has acknowledged in the FEDERAL REGISTER receipt of the plan and is now providing an opportunity for the public to comment on this plan. All comments submitted by the public on the Colorado State plan will be considered. After considering the plan submitted by the State and all public comments, including the hearing transcript, the Environmental Protection Agency will take such final action as appropriate to approve all portions of the plan

submitted by Colorado that are approvable and promulgate Federal regulations for the remainder.

District of Columbia

In accordance with *NRDC* v. *EPA*, the District of Columbia was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the photochemical oxidants and carbon monoxide standards in the District of Columbia portion of the National Capital interstate region by May 31, 1975.

In order to develop a comprehensive plan for the National Capital interstate region, the District of Columbia revised and updated its original implementation plan to reflect the recommendations of the National Capital Interstate Air Quality Planning Committee. This committee is composed of representatives from the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, including local jurisdictions. The committee was formed by an administrative agreement among Virginia, Maryland, the District of Columbia, and the Metropolitan Washington Council of Governments, and received a funding grant under section 106 of the Clean Air Act for the prime purpose of developing a region-wide transportation plan.

The District of Columbia held public hearings on February 12 and 13, 1973. Statements were presented by representatives of commerce, industry, and citizen environmental groups. Substantial support was evidenced for land use controls, staggered work hours, carpool incentives, "bike-ways," restrictions on free employee parking facilities, and an expanded commuter rail system. Business representatives objected to parking surcharges and the proposed ban on day-time deliveries by heavy-duty gasoline-powered trucks.

Upon receipt of the District of Columbia plan, EPA published notice of its arrival in the Federal Register, 38 FR 11114 (May 4, 1973), and invited comments. Comments were received from industry, public environmental organizations, chambers of commerce, governmental organizations, and private individuals. The written comments reflected strong objections to peak-hour delivery bans, the parking surcharge, and the retrofit of gasoline service stations; evidenced substantial concern regarding the technical feasibility and safety implications of the proposed curtailment of aircraft taxing [sic]; and urged region-wide implementation of the plan. Receipt of the written comments was acknowledged by letters from the Regional Administrators to the commenting sources.

The comments submitted by the Natural Resources Defense Council deserve special mention. These comments challenged as too low the air quality baseline data used by EPA. They urged that the air quality monitoring system proposed by the District of Columbia be increased, and called for a commitment to implementation of a VMT surveillance system. They also urged that a more comprehensive system of vehicle restraints and VMT reduction measures be established. In addition, NRDC stated that a uniform plan for the entire air quality control region must be adopted, and expressed doubts as to the feasibility of the proposed retrofit program. Finally, NRDC stated that legal authority, regulations, timetables for implementation, adequate resources, and enforcement responsibilities and procedures were lacking in the case of certain strategies.

The plan proposed by the District of Columbia includes a broad spectrum of control measures for both mobile and stationary sources, which, if they can be fully implemented, could achieve the primary air quality standards for photochemical oxidants and carbon monoxide by May 31, 1975. Moreover, interim measures are proposed that could be implemented in the event that some of the primary measures are not available by May 31, 1975. However, the absence of proposed regulations and specific procedures for enforcement and administration of portions of the plan, plus the improbable availability or full implementation of several proposed control measures by May 31, 1975, preclude full approval of the plan.

Although no extension was requested, the Administrator is currently of the opinion that the long lead-time required for the principal control measure (catalytic converters) may well make it impossible to achieve national ambient air quality standards by May 31, 1975. Therefore, the Environmental Protection Agency proposes to promulgate a uniform plan that will reflect both the comprehensiveness of the control measures proposed by the District of Columbia and realistic lead-time constraints.

ILLINOIS

In accordance with *NRDC* v. *EPA*, Illinois was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the carbon monoxide standards in the Illinois portion of the Metropolitan Chicago interstate region by May 31, 1975.

The Illinois Environmental Protection Agency held public hearings on April 5 and 6, 1973, on its proposal for a transportation plan. This plan was subsequently submitted to the Administrator on April 17, 1973. Recepit was acknowledged in the April 27, 1973, FEDERAL REGISTER, along with a statement that EPA would consider additional comments submitted by the public. A comment from the Clean Air Coordinating Committee of Chicago, Ill., objected to this plan for the following reasons, among others:

(A) Failure to utilize current State procedures in adopting this plan, and

(B) Lack of requisite legal authority for implementation.

Based on an examination of applicable State and Federal law, procedures, and precedents (including the original State implementation plan adoption and submittal), the Administrator has determined that the State of Illinois has not adopted a transportation plan for submission to the Administrator, as required. It was found under sections 4 and 5 of the Illinois Environmental Protection Act that the authority to propose and determine

the necessary transportation strategies does not reside unilaterally with the Illinois Environmental Protection Agency.

The Administrator, however, has examined this proposed plan, together with the entire hearing record of the State, and has determined that the proposed plan, had it met the requirements for adoption, would not have provided strategies that have the total capacity for attaining and maintaining the national standards for carbon monoxide. These proposed strategies were the Federal motor vehicle control program, which affects all gasoline-powered vehicles in the region; the Chicago motor vehicle emission inspection program, which affects vehicles in the city of Chicago; and the enforcement of parking restrictions on one side of one-way streets, which will only affect the Chicago central business district. Environmental Protection Agency calculations show that the strategies presented in this proposed plan would result in a total of 44-percent reduction in carbon monoxide emissions in the Chicago central business district instead of the necessary 50-percent reduction, based on measured air quality data reflected in the State's submission. A more detailed review by EPA of this proposed plan will be provided to the State. Copies of this evaluation report will be available for public inspection at the Environmental Protection Agency, region V, 1 North Wacker Drive, Chicago, Ill. 60606, and at the Office of Public Affairs, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

A proposed EPA regulation setting forth a plan to attain and maintain the CO standards in the Illinois portion of the Metropolitan Chicago interstate region will be published shortly in the FEDERAL REGISTER and will provide an opportunity for the public to comment on the proposed plan.

INDIANA

The State of Indiana was granted, pursuant to section 110(e) of the act, an extension of 2 years from the attainment of the photochemical oxidant (hydrocarbon)

and carbon monoxide standards in the Metropolitan Indianapolis intrastate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Indiana was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Indiana held public hearings on proposed revisions to its plan for the Metropolitan Indianapolis intrastate region on April 9, 1973. On this date, the State indicated that the proposed plan was adequate to attain and maintain the air quality standards by May 31, 1975, with no application of additional controls for mobile or stationary sources. The Indiana SIP as originally submitted based its need for an extension for attainment of the CO standards upon the fact that a 28-percent reduction in CO emission would be achieved while a 45-percent reduction was needed. The 45-percent emission reduction was calculated using 16.3 parts per million 8-hour concentration as the second highest concentration. A reanalysis indicates that this was not the true second highest concentration because the 8 hours in which it was measured overlapped by 7 hours the period in which the highest concentration was measured. The second highest 8-hour concentration, which did not include any of the time period in which the highest concentration was measured, was 12.1 parts per million and occurred twice, September 7 and July 6, 1971. It has not been equaled since that time. This concentration of 12.1 parts per million would indicate that 25.6 percent reduction in CO emissions would be sufficient to attain the standards.

It was pointed out at the hearing that the air quality standard for photochemical oxidants was not exceeded once during the calendar year of 1972. The original Indiana plan with its need for an extension was based upon the second highest 1-hour average photochemical oxidant measurement of 0.13 parts per million recorded in 1971. There was no apparent opposition to the State's implied intent to neither propose any additional strategies nor

request an extension for attaining the photochemical oxidant ambient air quality standard by 1975. However, at that time, the EPA region V office requested that the proposed plan provide an explanation regarding the reduction of measured photochemical oxidant concentrations between the years 1971 and 1972.

The State has not formally submitted its plan to date. Because the court order requires the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan, the Administrator is disapproving those portions of the Indiana plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is solely based upon the lack of timely submittal of the required plan and is not meant to reflect on the content of an expected late submittal. A proposed EPA plan will be published soon for comment.

The Governor of Indiana is expected to submit the plan in the near future. When the plan is received, the Environmental Protection Agency will acknowledge, in the FEDERAL REGISTER, receipt of the plan and will provide an opportunity for the public to comment on this plan. All comments submitted by the public on both the EPA proposal and the anticipated Indiana State plan will be considered. After considering the plan submitted by the State of Indiana and all comments, the Environmental Protection Agency will take such final action as appropriate to approve all portions of any plan submitted by Indiana that are approvable and promulgate Federal regulations for the balance.

KANSAS

The State of Kansas was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the carbon monoxide standards in the Kansas portion of the Metropolitan Kansas City interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded and Kansas was directed to submit a trans-

portation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The Kansas Board of Health in conjunction with the State of Missouri held a public hearing on April 12, 1973, during which alternative transportation control strategies were c idered. Subsequent to that hearing, Kansas submitted a non-regulatory plan revision that utilized a lower air quality base value for computing the required degree of control to meet the air quality standards by May 31, 1975. The State indicated that the Federal motor vehicle control program plus stationary source control of carbon monoxide would be sufficient to provide the required emission reductions and would thus obviate the need for a transportation and/or land use control strategy. Because of the late submission of the plan revision, the Administrator has not had adequate time to evaluate public comments on the approvability of such revisions. Hence, as required by the January 31, 1973, court order, the Administrator is today disapproving those portions of the Kansas implementation plan that were to be addressed.

After the period for opportunity for public comment on the plan closes, all comments submitted by the public will be considered in the plan review. The Environmental Protection Agency will then revise this disapproval notice as is deemed appropriate.

LOUISIANA

The State of Louisiana was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the photochemical oxidant (hydrocarbon) standards in the Louisiana portion of the southern Louisiana-southeast Texas interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Louisiana was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

On March 30, 1973, Louisiana submitted implementation plan revisions that consisted of controls for hydrocarbon emissions from stationary sources (regulations 22.8 and A 22.8), emission inventory changes, and an updated control strategy. These revisions indicated that the national standards for photochemical oxidants (hydrocarbons) would be attained in Louisiana's portion of the southern Louisiana-southeast Texas interstate region by May 31, 1975. A review of these revisions was conducted by the Administrator, pursuant to 40 CFR, part 51. Submittals by the State must be reported in the FEDERAL REGISTER, and a 21-day period set for receipt and analysis of public comment prior to approval/disapproval. Because Louisiana's submittal was not promptly reported, there is insufficient time to analyze and/or include public comment into the approval/disapproval decision by June 15, 1973. When analysis of public comments is completed, this notice will be revised accordingly.

A summary of the Administrator's review based on currently available information is contained in the evaluation report which is available at both the Freedom of Information Center, EPA, room 329, 401 M Street SW., Washington, D.C. 20460, and the Office of Public Affairs, EPA, Region VI, 1600 Patterson Street, suite 1100, Dallas, Tex. 75201.

Public hearings were held by the State of Louisiana on December 28, 1972, to consider the revisions to the State's stationary source controls, and on March 1, 1973, to consider the revised control strategy. The revisions were adopted in accordance with procedural requirements of State and Federal law, which provided for adequate public participation through notice, public hearings, and time for comment. The general consensus of those present at the hearings was that the proposals were satisfactory.

MARYLAND

The State of Maryland was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the standards for carbon monoxide in the

Metropolitan Baltimore intrastate region and for photochemical oxidants and carbon monoxide in the Maryland portion of the National Capital interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Maryland was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

Although neither the May 31, 1972, nor the March 20, 1973, amendments to 40 CFR, part 52 require the submission of a strategy for the attainment and maintenance of national standards for photochemical oxidants (hydrocarbons) in the Metropolitan Baltimore intrastate region, more recent data indicate a serious hydrocarbon problem there. Because more recent data from fully calibrated instrumentation indicated excessive concentrations of photochemical oxidants in the Metropolitan Baltimore intrastate region, the State of Maryland prepared and submitted proposed strategies for both pollutants in both the Metropolitan Baltimore intrastate region and the National Capital interstate region.

The State of Maryland held public hearings on the proposed plans on March 5, 1973, for the National Capital interstate region, and on February 28, 1973, and April 4, 1973, for the Metropolitan Baltimore intrastate region. All sessions were attended by representatives of industry, government, and environmental citizens' groups, and by private citizens. In each case, environmental groups advocated decreased highway construction, all groups supported improved mass transit, and industry representatives objected to bans on heavy-duty truck deliveries and to retrofit of vapor recovery devices.

The Governor of Maryland submitted a plan for the State of Maryland on April 16, 1973, and requested a 2-year extension based on the unavailability of rapid transit, vehicle use control, inspection maintenance system, heavy-duty vehicle retrofit, and service station operation elements. Upon receipt of the plan, EPA published notice of its arrival in the FEDERAL REGISTER, 38 FR 10120 (April 24, 1973), and invited comments. Comments were received from industry, public environmental

organizations, chambers of commerce, governmental organizations, and private individuals. Principal comments from these sources reflected the lack of a specific VMT control program, the unavailability of lead-free gasoline, and the economic impracticability of banning new stationary sources. Receipt of the written comments has been acknowledged by letters from the Regional Administrator to the commenting sources.

The comments submitted by the Natural Resources Defense Council deserve special mention. These comments asserted that the reductions claimed for the inspection and maintenance portions of the plan were inadequately supported by data, and that both the stationary source and the inspection and maintenance programs were not described in the required detail. In addition, the failure to include any VMT reduction measures was criticized.

EPA is in agreement with basically all of these comments, and has disapproved portions of the Maryland plan accordingly. These deficiencies also require that Maryland's request for a 2-year extension be denied at this point.

The plan submitted primarily covered the transportation control program in the Metropolitan Baltimore intrastate region. Very limited information was provided for the National Capital interstate region. Thus, evaluation of the latter region is subject to considerable updating when supplementary information is provided by Maryland. It is EPA's understanding that such an update is currently in preparation. Although no assumptions are made concerning future contents of an updated plan, a number of statewide items, such as a motor vehicle inspection program, could apply equally to both of the regions. Consequently, it is deemed reasonable that this evaluation will reflect those items in the current Metropolitan Baltimore plan that would apply to a National Capital plan had it been prepared in a more rigorous manner and in the proper format.

Although the plan submitted contained a broad spectrum of proposed strategies, they were very general and provided little assurance that they are feasible and capable of implementation. In his transmitted correspond-

ence, the Governor of Maryland states his difficulty in proposing a catalytic converter retrofit program. The supplemental information provided with the plan presents reductions attributable to such a program. This has compounded the Administrator's program in determining which emission reduction credits may legitimately be claimed. Further compounding the problem of a sound plan evaluation is the totally inadequate consideration given to various social and economic aspects of proposed strategies.

Because the court order requires the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan, the Administrator is approving those portions of the Maryland plan that satisfy the requirements of 40 CFR, part 51, and is disapproving those parts of the plan that are deficient. A proposed EPA plan that remedies these deficiencies will be published soon for comment and will be promulgated on August 15, 1973, as required by the Clean Air Act.

It is expected that the Governor of Maryland will submit additional elements of the proposed plan in the near future. When they are received, EPA will acknowledge, in the FEDERAL REGISTER, receipt of the additions and will provide an opportunity for the public to comment on these additions. After considering the additions submitted by the State of Maryland and all comments, EPA will revise this initial action as appropriate to approve all portions of any plan submitted by Maryland that are approvable and to propose Federal regulations for the remainder.

MASSACHUSETTS

The State of Massachusetts was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment and maintenance of the photochemical oxidant (hydrocarbon) and carbon monoxide standards in the Metropolitan Boston intrastate region and the standards for carbon monoxide in the Massachusetts portion of the Hartford-New Haven-Springfield interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded and Massachusetts was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

As a result of Massachusetts' unresponsiveness to the Administrator's order of March 20, 1973 (38 FR 7323), the Administrator must at this time indicate that deficiency and list the resultant exception to the approvability of the Massachusetts plan for the Metropolitan Boston intrastate region and the Hartford-New Haven-Springfield interstate region.

MINNESOTA

The State of Minnesota was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the carbon monoxide standards in the Minneapolis-St. Paul intrastate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded and Minnesota was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Minnesota held a preliminary hearing on the proposed plan on January 16, 1973, and subsequent formal public hearings were held on February 20, 1973, and May 3, 1973. The plan, however, has not yet been submitted to the Administrator. Since the Administrator, because of the court order, must approve or disapprove State plans within 2 months after the required submission date, the Administrator is today disapproving those portions of the Minnesota implementation plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is based solely upon the lack of timely submittal of the plan and an expected late submittal. A proposed EPA plan will be published soon for comment.

The Governor of Minnesota is expected to submit their plan in the near future. When it is received, the Environmental Protection Agency will acknowledge, in the FED-

ERAL REGISTER, receipt of the plan and will provide an opportunity for the public to comment on the plan. All comments submitted by the public on both the EPA proposal and the anticipated Minnesota State plan will be considered. After considering the plan submitted by the State of Minnesota and all comments, the Environmental Protection Agency will take such final action as appropriate to approve all portions of any plan submitted by Minnesota that are approvable and promulgate Federal regulations for the remainder.

MISSOURI

The State of Missouri was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the carbon monoxide standards in the Missouri portion of the Metropolitan Kansas City interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Missouri was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

On May 21, 1973, the State of Missouri submitted a nonregulatory plan revision that utilized a lower air quality base value for computing the required degree of control to meet the air quality standards by May 31, 1975. The State indicated that the Federal motor vehicle control program plus stationary source control of carbon monoxide would be sufficient to provide the required emission reductions and would thus obviate the need for a transportation and/or land use control strategy. Because of the late submission of the plan revision, the Administrator has not had adequate time to evaluate public comments on the approvability of such revisions. Hence, as required by the January 31, 1973, court order, the Administrator is today disapproving those portions of the Missouri implementation plan that were to be addressed.

After the period for opportunity for public comment on the plan closes, all comments submitted by the public will be considered in the plan review. The Environmental Protection Agency will then revise this disapproval notice as is deemed appropriate.

NEW JERSEY

On May 31, 1972 (37 FR 10842), the Administrator approved New Jersey's implementation plan for attaining the national ambient air quality standards for carbon monoxide and photochemical oxidants (hydrocarbons). He also granted the 2-year extension requested by the Governor, pursuant to section 110(e) of the Act, for the attainment of the photochemical oxidant (hydrocarbon) and carbon monoxide standards Jersey-New York-Connecticut interstate region and the New Jersey portion of the Region and the New Jersey portion of the Metropolitan Philadelphia interstate region. The basis of New Jersey's 2-year extension was that the Federal motor vehicle control program and the New Jersey motor vehicle inspection program could provide for the attainment of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) by May 31, 1977, without the imposition of additional transportation control measures that would be difficult to implement. These additional measures would have to be implemented to provide for attainment of the standards by May 31, 1975.

On March 20, 1973 (38 FR 7323), the Administrator, in effect, disapproved the transportation control plan previously submitted by New Jersey on January 26, 1972. Because of the stringent timetable imposed by the court decision, the State of New Jersey was unable to submit a transportation control plan for achieving the national ambient air quality standards for photochemical oxidants and carbon monoxide in both the Metropolitan Philadelphia interstate region and the New Jersey-New York-Connecticut interstate region. However, in an effort to show good faith, the Commissioner of the New Jersey Department of Environmental Protection, acting in behalf of the Governor, sent a letter to the Regional Ad-

ministrator expressing his intent to develop a plan as soon as possible and identifying seven alternative strategies that the State would consider. The most comprehensive strategy presented included the following:

1. Compliance with the Federal motor vehicle control program for new vehicles by 1976.
2. Compliance with the more restrictive inspection/maintenance standards that are expected to reject approximately 45 percent of New Jersey vehicles,
3. Control of stationary sources, and
4. Reduction of vehicle miles traveled during critical seasons of the year by rationing of gasoline to the extent required to achieve a 69 percent reduction in hydrocarbon emissions.

NOTE.—This strategy could be employed singly, or in combination with any of the above strategies.

Because the court order requires the Administrator to approve or disapprove State plans within two months after the date required for submission of a plan, the Administrator is disapproving those portions of the New Jersey plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is solely based upon the lack of timely submittal of the required plan. Should the State of New Jersey submit its required plan, the Environmental Protection Agency will acknowledge formal receipt of the plan through the FEDERAL REGISTER and will provide an opportunity for the public to comment on the State plan. All comments submitted will be considered in the plan review. The Environmental Protection Agency will then revise this disapproval notice as is deemed appropriate.

NEW YORK

The State of New York was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the photochemical oxidant (hydrocarbon) and carbon monoxide standards in the New York portion of the New Jersey-New York-Connecticut interstate region, for the carbon monoxide standards in the Central New York intrastate region, and for the photochemical oxidant (hydrocarbon) standard in the Genesee-Finger Lakes intrastate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and New York was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of New York held public hearings on its proposed plan for their portion of the New Jersey-New York-Connecticut interstate region on April 9, 1973, and for the Genesee-Finger Lakes intrastate region on April 5, 1973. A hearing was held for the Central New York intrastate region on April 4, 1973.

Pursuant to the March 20, 1973 FEDERAL REGISTER (38 FR 7323), the State of New York submitted the transportation control strategies for its portion of the New Jersey-New York-Connecticut interstate region on April 17, 1973, and for the Genesee-Finger Lakes intrastate region on April 30, 1973. The nonregulatory revision to the Central New York intrastate region was also submitted on April 30, 1973.

The Administrator has reviewed the control strategies submitted by the State of New York for the above-mentioned regions and has found them to be adequate for attainment and maintenance of the national standards. A summary of the review upon which this determination was made is available at the Public Affairs Office, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007, and at the Environmental Protection Agency, Freedom of Information Center, room 329, 401 M Street SW., Washington, D.C. 20460.

The State of New York's Department of Environmental Conservation, as mentioned previously, held a hearing on April 9, 1973, on the State's proposed transportation controls for the attainment and maintenance of the national standards on carbon monoxide and photochemical oxidants (hydrocarbons). A total of 61 people presented oral testimony at the hearing. A number of additional written

statements were submitted at the office of the New York State Department of Environmental Conservation by May 10, 1973. Among those who testified in person were two representatives of County Health agencies, 10 State and local government officials or their representatives, spokesmen for 15 environmental groups, and 10 spokesmen for various industries. The remainder represented a cross-section of transportation and planning groups and private citizens.

A review of the transcript of the hearing indicates that the majority of those who testified gave strong support to the traffic control measures and emphasized the need to implement the strategies providing for improvements in mass transit. On the other hand, a majority of those who discussed specific strategies were strongly opposed to the light-duty vehicle retrofit measures. These included the representatives of the Nassau County Health Department, the Suffolk County Department of Environmental Conservation, the Automobile Club of New York, representatives of the petroleum industry, and a number of environmental groups.

Strategies requiring the imposition of tolls on all East River and Harlem River bridges and the after-hour delivery to offices and stores (originally presented as maintenance strategies) attracted little comment. Firm opposition to the imposition of tolls on the bridges was voiced by three of five government officials who specifically addressed the issue. Several speakers expressed their serious concern as to whether the plan could or would be implemented because it did not adequately address the issues of institutional and economic hindrances to its implementation and enforcement.

A detailed analysis of the hearing record further substantiated the opinion that pervaded the hearing chamber —that the overwhelming majority of those who testified believed that many of the strategies proposed by the State were in the best interests of New York City and should be implemented whether they would provide any significant reductions in ambient concentrations.

The New York Department of Environment Conservation coordinated a public hearing on the proposed transportation control strategies for the Genesee-Finger Lakes intrastate region on April 5, 1973. A review of the transcript indicates that only three people presented testimony that had a direct bearing on the proposed plan. Each of these criticized the measure that requires retrofit on pre-1968 motor vehicles. Specific alternatives were offered. Some of these were the establishment of a standard inspection system and improvement of mass transit.

Upon receipt of the plan, EPA published notice of its arrival in the FEDERAL REGISTER (38 FR 10465), April 27, 1973, and invited comments. All comments received related to the New York City area. Comments were received from oil companies, environmental groups, private citizens, and the Automobile Club of New York. The oil companies objected to any requirement for catalytic retrofits, as did the Automobile Club of New York. Other comments called for more VMT reduction, criticized the lack of controls over developments like Battery Park City and the Convention Center, and asked for greater commitment of resources to the clean air effort.

The comments submitted by the Natural Resources Defense Council deserve special mention.

These addressed exclusively the plan for the New York City area, and found three major deficiencies in the measures to be implemented to achieve the standards by 1975, namely a lack of provisions for cooperation with New Jersey, a failure to provide for enough VMT reduction, and vagueness in the regulatory proposals.

As the latter indicates, however, the lack of intergovernmental cooperation stems from a failure on New Jersey's part, not New York's. It is therefore inappropriately addressed under a New York heading.

Contrary to the statement on page 3 of the letter that New York has only adopted a single VMT reduction measure—parking restrictions—New York will also implement a system of bus-only commuter lanes, a ban on taxi cruising, a ban on mid-day truck deliveries, and raising tolls on certain bridges. In addition, the reduc-

tion in parking spaces to which NRDC alludes, is to be on the order of 30 to 50 percent.

There can be no question but that New York plan provides for substantial VMT reduction. Given this, EPA has concluded that New York was justified in concluding that even more would not be available by 1975. The Clean Air Act contemplates that States will be the initial judges of what measures to use to improve air quality. If significant measures that result in substantial VMT reductions are provided, then EPA will not interfere with the measures the State has chosen.

Included with the implementation plan revision submitted by New York was a request by the Governor for a 2-year extension of attainment of the national ambient air quality standard for photochemical oxidants in the New York City area, and 18-month extensions for the achievement of the national ambient air quality standards for carbon monoxide in the New York City area, and for achievement of the national ambient air quality standard for photochemical oxidants in the Genesee-Finger Lakes region.

This extension request was based on the assumption that the retrofitting of passenger vehicles with catalytic emission control devices was not technically feasible. The Governor also questioned the reliability of the devices, the capability to produce and install the needed devices within the needed time frame, and the petroleum industry's capacity to produce the needed quantity of lead-free gasoline.

Analysis of the strategies including the Federal motor vehicle control program, a statewide emission inspection and maintenance program, and stationary source controls shows that these will provide sufficient reductions in hydrocarbon emissions to ensure the attainment of the national standard for photochemical oxidants in the Genessee-Finger Lakes region by 1975. Thus, the Governor's request for an extension until the end of 1976 in the attainment date to achieve the national standard for photochemical oxidants in the Genesee-Finger Lakes region, is disapproved.

Nineteen-month extensions were granted for attainment of the national standards for carbon monoxide and photochemical oxidants in the New York City area.

OHIO

The State of Ohio was granted, pursuant to section 110 (e) of the act, an extension of 2 years for the attainment of the photochemical oxidant (hydrocarbon) standards in the Metropolitan Dayton intrastate region, the Metropolitan Cincinnati interstate region, and the Metropolitan Toledo interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Ohio was directed to submit a transportation strategy by April 15, 1973, that would provide for attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Ohio held public hearings on the proposed plan for the Metropolitan Dayton intrastate region on May 17, 1973, and for the Metropolitan Cincinnati interstate and Metropolitan Toledo interstate regions on May 29 and 30, 1973, respectively. These plans, however, have not yet been submitted to the Administrator.

Because the court order requires the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan, the Administrator is disapproving those portions of the Ohio plan that were required to be submitted pursuant to paragraph 3 of the court order. This disapproval is solely based upon the lack of timely submittal of the required plan, and is not meant to have any reflection upon the content of any submitted revisions. A proposed EPA plan will soon be published for comment.

The Governor of Ohio is expected to submit the revised plan in the near future. When it is received, the Environmental Protection Agency will acknowledge, in the FEDERAL REGISTER, receipt of the plan and will provide an opportunity for the public to comment on this plan. All comments submitted by the public on both the EPA proposal and the anticipated Ohio State plan will

be considered. After considering the plan submitted by the State of Ohio and all comments, the Environmental Protection Agency will take such final action as appropriate to approve all portions of any plan submitted by Ohio that are approvable and promulgate Federal regulations for the remainder.

OREGON

On October 26, 1972, the State of Oregon submitted to EPA a transportation control strategy to attain the national standards for carbon monoxide and photochemical oxidants by May 31, 1975, in the Oregon portion of the Portland interstate region. On December 20, 1972, the State was notified by EPA of certain deficiencies to be corrected in the submitted plan before it could be approved by EPA.

In accordance with *NRDC* v. *EPA*, Oregon was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment of the photochemical oxidant (hydrocarbon) and carbon monoxide standards in the Oregon portion of the Portland interstate region.

On April 13, 1973, the State of Oregon transmitted to EPA a transportation control strategy for the Oregon portion of the Portland interstate region. On April 27, 1973, EPA announced receipt of the strategy submitted by the State of Oregon and solicited public comments (38 FR 10466). The comments received in response to the announcement, as well as comments made at the public hearings held by the State of Oregon on March 2 and May 29, 1973, were considered by EPA in evaluating the transportation control strategy adopted by Oregon.

The subject of the March 2 hearing was a proposed regulation designating the four counties where a motor vehicle emission inspection program will be implemented. In the testimony presented at the hearing the only major point of disagreement with the proposed regulation was the geographic scope proposed for the inspection program. Suggestions were made to expand the scope of the inspection program to encompass the entire State or the whole Willamette Valley.

No member of the public appeared to present testimony at the State hearing held on May 29, 1973, to consider adoption of the transportation control strategy for the Portland interstate region. EPA has requested copies of the testimony presented at earlier hearings on the transportation control strategy, held by the State on October 25, 1973, and by the Portland City Council on October 12, 1972. A number of citizen groups and public agencies did participate in the development of the transportation control strategy and did present testimony at the earlier hearings.

Comments were received from the National Resources Defense Council and from two oil companies in response to the FEDERAL REGISTER notice. NRDC criticized as excessive the reductions claimed from the proposed inspection and maintenance system and the replacement of new cars by old. It also called for abandonment of the proposal to replace all eliminated onstreet parking with new offstreet facilities. The oil companies objected to any requirement for catalytic retrofits among other points.

Based on his review of the transportation control plan submitted by the State of Oregon for the Oregon portion of the Portland interstate region and the comments submitted in response to the announcement in 38 FR 10466, the Administrator has found the Oregon submission to be adequate, with certain exceptions, for attainment of national ambient air quality standards. The basis for this determination is contained in an evaluation report available to the public at the library of the Environmental Protection Agency, region X, 1200 Sixth Avenue, Seattle, Wash. 98101, and at the Environmental Protection Agency, Office of Public Affairs, 401 M Street, SW., Washington, D.C. 20460.

PENNSYLVANIA

The State of Pennsylvania was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the photochemical oxidant (hydrocarbon) and carbon monoxide standards in the southwest Pennsylvania intrastate region and for the carbon monoxide

standards in the Pennsylvania portion of the Metropolitan Philadelphia interstate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Pennsylvania was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Pennsylvania held public hearings on the Pennsylvania portion of the Metropolitan Philadelphia interstate region and on the southwest Pennsylvania intrastate region on April 5 and 6, 1973, respectively. Attendees at both hearings included representatives of commerce, business, government, and citizen environmental groups, as well as private citizens.

Participants in the Philadelphia hearings voiced strong support for improved mass transit with fringe parking and unified fares; a majority favored the 2-year extension, and several speakers recommended a horsepower surtax and use of highway trust funds for mass transit. The Pittsburgh hearing included numerous presentations by the business community, as well as by government agencies, in which were voiced strong support for mass transit improvements, general support for a statewide inspection system, and substantial opposition to vehicle restraints.

The Governor of Pennsylvania submitted the plan for the State of Pennsylvania on April 13, 1973, and requested a 2-year extension (pollutants not stated) based on public opposition to direct restraints and the unavailability of adequate funding for transit expansion. The plan for the Metropolitan Philadelphia interstate region is based on the assumption that carbon monoxide concentrations in the central business district are 50 percent higher than at the continuous air monitoring project (CAMP) station whose readings provided the approved air quality data base presented in the basic implementation plan submitted on January 27, 1972.

Upon receipt of the plan, EPA published notice of its arrival in the FEDERAL REGISTER, 38 FR 10120 (Apr. 24, 1973), and invited comments. Comments were received from industry, public environmental organizations, chambers of commerce, governmental organizations, and private individuals; comments by governmental and environmental organizations emphasized the inadequacy of the plan, and the business community expressed concern over the proposed vehicle restraints.

The comments submitted by the Natural Resources Defense Council deserve special mention. They claimed that, although several promising strategies had been put forth by the State, the plan failed both to state unequivocally that those strategies would be adopted and to support them with the required timetables, designation of enforcement authorities, and draft regulations. The lack of VMT reduction measures was particularly criticized.

Based on his view of the plan, the Administrator has concluded that the proposed adoption of a diagnostic inspection and maintenance system cannot be justified when more effective systems are available to meet the standards. In addition, some of the VMT restraint measures have not been spelled out in the required detail. Finally, the extension request cannot be granted until it is shown that the most effective inspection and maintenance system reasonably available and the most extensive VMT reduction measures reasonably available will be implemented as soon as practicable.

Although Pennsylvania's transportation control plan purports to provide sufficient control measures for achieving the required reductions in carbon monoxide emissions, detailed quantification is lacking, and the proposed improvements, as described in various sections of the plan, are frequently contradictory. Moreover, no consideration whatever is given to hydrocarbon emissions in Pittsburgh, which must be reduced substantially if the primary standard is to be achieved by 1975. In addition, the baseline air quality concentration for Philadelphia differs from the approved lower figure presented in the original implementation plan, and is not substantiated by valid test data. On the basis of information presently available to the Administrator, the Philadelphia air quality concentrations of carbon monoxide are consistent with national averages when viewed from the aspect of traffic density levels. In the event that continued moni-

toring indicates that a higher (worse) air quality baseline exist in Philadelphia, appropriate revisions of the plan will be required. Although supporting computations for a higher air quality baseline were presented in the earlier (Dec. 20, 1972) version of the plan, no such data are included in the final plan as submitted.

Because the court order requires the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan, the Administrator is approving those portions of the Pennsylvania plan that satisfy the requirements of 40 CFR, pt. 51, and is disapproving those parts of the plan that are deficient. A proposed EPA plan that remedies these deficiencies will be published soon for comment and will be promulgated on August 15, 1973, as required by the Clean Air Act.

TEXAS

The State of Texas was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of the photochemical oxidant (hydrocarbon) standards in the Corpus Christi-Victoria and Metropolitan Houston-Galveston intrastate region.

In accordance with *NRDC* v. *EPA*, the extension was rescinded, and Texas was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975. In addition, Texas was directed to submit a transportation strategy for photochemical oxidants (hydrocarbons) in the Austin-Waco intrastate region, the Dallas-Fort Worth intrastate region, the San Antonio intrastate region, and the El Paso-Las Cruces-Alamorgordo interstate region.

Prior to adoption of a plan, the State must make principal portions of the plan, including revisions, available to the public, and must provide for a public hearing to receive testimony regarding the proposed plan. The State of Texas held hearings on April 4, 1973, in Dallas, Houston, and San Antonio, Tex. However, the principal portions or revisions in the control strategy were not made

available for public inspection and public comment prior to the hearings. Testimony given at the hearings, as well as written inquiries to the Administrator, substantiate this deficiency. Therefore, it is the opinion of the Administrator that the plan revision submitted by the State of Texas for control of hydrocarbon emissions cannot be considered as having met the minimum requirements of § 51.4.

It has been determined after review that the material submitted by Texas, even if it had been validly adopted, would not adequately insure, except in the Corpus Christi-Victoria intrastate region, that the plan meets the requirements of § 51.14. A summary of this review is contained in "Proposed Control Strategy to Meet Ambient Air Quality Standards for Photochemical Oxidants in Texas," which is available both at the Freedom of Information Center, EPA, room 329, 401 M Street SW., Washington, D.C. 20460, and at the Office of Public Affairs, EPA Region VI, 1600 Patterson Street, Suite 1100, Dallas, Tex. 75201.

The State's control strategy for reducing hydrocarbon emissions in the Corpus Christi-Victoria intrastate region was found to be adequate for attainment of the national standard for photochemical oxidants by May 31, 1975. However, since the State failed to hold adequate public hearings, the Administrator must propose a plan for the region. Upon completion of adequate public hearings by Texas, this notice will be revised accordingly.

Included with the implementation plan revision submitted by Texas was a request by the Governor of Texas for an extension until 1977 for the attainment of the primary standard for photochemical oxidants in all air quality control regions of the State. The Administrator does not consider the justification adequate for granting such extensions.

UTAH

The State of Utah was granted, pursuant to section 110(e) of the act, an extension of 2 years for the at-

tainment of the standards for carbon monoxide in the Wasatch Front intrastate region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded and Utah was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Utah held a public hearing on March 26, 1973, at which time the revised transportation and land-use control plan was presented to the participants.

The State of Utah submitted the plant to EPA on April 16, 1973. Upon receipt of the plan, EPA published notice of its arrival in the FEDERAL REGISTER, 38 FR 10120 (Apr. 24, 1973), and invited comments.

One comment was received from the National Resources Defense Council. It stated that the State had not shown how the strategies proposed would achieve the reductions claimed for them; that they were not supported by the required legal authority, draft regulations, or timetables for implementation; and that the State had failed to adopt any VMT reduction measures, even though the standards would not be achieved without them.

The Administrator has reviewed the control strategies submitted and finds them adequate with the exceptions noted below in the applicable regulations. An evaluation report that provides the rationale for the above determination is available for public inspection at the Office of Public Affairs, Environmental Protection Agency, Region VIII, Lincoln Street, Denver, Colo., and at the Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

A request for an extension of time for the attainment of the carbon monoxide standard is disapproved at this time because of a lack of sufficient supporting information.

VIRGINIA

Although neither the court order nor the March 20, 1973, amendments to 40 CFR part 52 applies directly to Virginia, their application to Maryland impacts on the

National Capital interstate region, thus requiring coordinated action by Virginia and the District of Columbia as well as Maryland. The Virginia plan was coordinated with Maryland and the District of Columbia, and comprises the 1975 attainment plan of the National Capital Interstate Air Quality Planning Committee forwarded to the two Governors and the Mayor-Commissioner on January 31, 1973. The emission inventory and planned reductions are on an interstate regional basis and have not been factored for Virginia's portion of the region.

The State of Virginia held public hearings on the proposed plan for Virginia's portion of the National Capital interstate region. Comments by representatives from government, industry, and citizen groups indicated overwhelming support for improved mass transit, some determined resistance to any controls that could conceivably destroy the auto-dominant life style, and substantial objections to catalytic retrofit, gasoline rationing, and retrofit of vapor recovery devices.

The Governor of Virginia submitted a plan for the State of Virginia on April 11, 1973. The plan is based on the recommendations of the National Capital Interstate Air Quality Planning Committee, and includes a broad spectrum of control measures for both stationary and mobile sources. The Governor requested a 2-year extension based on the unavailability of either catalytic converters or gasoline service station vapor recovery systems for dispensing-pump nozzles by May 31, 1975.

Upon receipt of the plan, EPA published notice of its arrival in the FEDERAL REGISTER, 38 FR 10119 (Apr. 24, 1973), and invited public comment. Comments were received from industry, public environmental organizations, chambers of commerce, governmental agencies, and private individuals. Environmental organizations objected to the request for a 2-year extension, industry emphasized the impossibility of installing vapor recovery devices on underground gasoline tanks before 1980, and commercial representatives voiced strong objections to the prohibition of heavy-duty gasoline truck deliveries from 6 a.m. to 6 p.m.

The comments submitted by the Natural Resources Defense Council deserve special mention. They objected to the lack of detailed regulations, to the failure to specify whether an idle test or a loaded test would be selected for the inspection and maintenance program, and to the lack of VMT reduction measures. They suggested that bus supply was not nearly the obstacle to expansion of mass transit facilities by 1975 that Virginia had claimed.

Upon review of the plan, the Administrator has determined that detailed description of and sufficient timetable for implementing VMT reductions and the inspection and maintenance program has not been provided. The proposed parking restrictions also suffer from this deficiency. For these reasons, and because it appears that additional VMT reduction measures may be reasonably available, no extension can be granted at this time.

Consequently, the catalytic retrofit control measure proposed by Virginia cannot be approved because it will not be available to the State in time to contribute to attainment of the standards by mid-1975.

Because the court order requires the Administrator to approve or disapprove State plans within 2 months after the date required for submission of a plan, the Administrator is approving those portions of the Virginia plan that satisfy the requirements of 40 CFR part 51, and is disapproving those parts of the plan that are deficient. A proposed EPA plan that remedies these deficiencies will soon be published for comment, and will be promulgated on August 15, 1973, as required by the Clean Air Act.

WASHINGTON

The State of Washington was granted, pursuant to section 110(e) of the act, an extension of 2 years for the attainment of carbon monoxide standards in the Puget Sound intrastate region and the Washington portion of the Eastern Washington-Northern Idaho Interstate Region, and for photochemical oxidant (hydrocarbon) standards in the Puget Sound Intrastate Region.

In accordance with *NRDC* v. *EPA*, this extension was rescinded, and Washington was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975.

The State of Washington held public hearings on April 11 and 12, 1973, on the proposed plan. The testimony presented at the hearings indicated general agreement with the traffic signal optimization and improved public transportation measures. Opinions on the exclusion of heavy-duty vehicles and the inspection and maintenance of light-duty vehicles varied.

Many individuals expressed concern that the exclusion of heavy-duty vehicles from the central business district would create hardships and economic losses. Most of those commenting at the hearings voiced reservations about the effectiveness, feasibility of implementation, and enforceability of intermittent exclusion of light- and heavy-duty vehicles. The generally held opinion appeared to be that intermittent exclusion, if adopted by the State, should be implemented only as an interim or contingency measure; i.e., all other possible measures should be explored and implemented first. Other comments about intermittent exclusion were that exclusion of light- and heavy-duty vehicles during peak traffic periods may be less detrimental to the viability of the central business district than the proposed exclusion during non-peak periods; that the number of days requiring exclusion may exceed State estimates; and that exclusion may decrease property values and create tax burdens.

Comments made at the hearings on the inspection and maintenance measure dealt with the need for cost control for retrofit installation, the desirability of random rather than mandatory inspections, and the insufficiency of the evidence of retrofit success. Continuous measures such as inspection and maintenance programs appear more acceptable to citizens than intermittent measures.

At the hearings, several persons also indicated that the complete State transportation control plan was not available long enough before the hearing for adequate re-

view. Another frequently expressed concern was that socioeconomic studies and ambient air quality measurements upon which the plan was based were limited.

Upon receipt of the Washington plan, EPA published notice of its arrival in the FEDERAL REGISTER, 38 FR 10465 (Apr. 27, 1973), and invited comments. The comments received in response to the announcement, as well as comments made at the public hearings held by the State of Washington on April 11 and 12, 1973, were considered by EPA in evaluating the transportation control strategies adopted by Washington. The Natural Resources Defense Counsel objected to the proposed use of episodic controls to achieve the CO standard, arguing that they are unreliable; argued that oxidant control measures are needed as well; and called for steps to reduce VMT. The only other comments received were from two oil companies who questioned the availability of catalytic retrofits, among other points.

Based on his review of the material submitted, the Administrator has determined that the intermittent control strategy has not been shown to be an effective means of achieving air quality standards. In addition, other portions of the plan lack the required detail. In the submitted materials, the State indicated that the measurements of oxidant concentrations, upon which the original EPA requirement for a transportation control strategy for the Puget Sound intrastate region was based, are invalid and that no reductions in hydrocarbon emission beyond those achieveable through the increasingly stringent Federal [Motor Vehicle Control Program . . .] will be required to attain the oxidant standard by 1975. EPA has requested further substantiation of this claim and a demonstration that no further reduction in hydrocarbon emissions is required.

Based on his review of the transportation strategy submitted by the State of Washington for the Puget Sound intrastate region and the Washington portion of the eastern Washington-northern Idaho interstate region; of the transcripts from the State hearings held on

April 11 and 12, 1973; and of the comments received in response to the announcement in 38 FR 10464, the Administrator has found the Washington submission to be adequate, with certain exceptions, for the attainment of the standards in both the Puget Sound intrastate region and the Washington portion of the eastern Washington-northern Idaho interstate region. The basis for this determination is available to the public in report form at the library of the Environmental Protection Agency, region X, 1200 Sixth Avenue, Seattle, Wash. 98101, and at the Environmental Protection Agency, Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460.

(42 U.S.C. 1857 c-5.)

Dated June 15, 1973.

ROBERT W. FRI,
Acting Administrator.

NOTE.—Pursuant to § 52.02(d), incorporation by reference of approved provisions of State plans was approved by the Director of the Federal Register on May 18, 1972.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart B—Alabama

1. Section 52.50 is amended by revising paragraph (c) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) March 21, April 18, and April 28, 1972, by the Alabama Air Pollution Control Commission, and

(2) April 24, 1973.

§ 52.54 [Amended]

2. Section 52.54 is amended by revising the attainment date table as follows: The date "May 31, 1975, e" for attainment of the national standards for carbon monoxide in the Metropolitan Birmingham Interstate Region and the national standard for photochemical oxidants (hydrocarbons) in the Metropolitan Birmingham Intrastate and the Mobile (Ala.)—Pensacola-Panama City (Fla.)—Southern Mississippi Interstate Regions, is replaced with the date "May 31, 1975".

§ 52.55 [Revoked]

3. Section 52.55 is revoked.

Subpart C—Alaska

4. Subpart C is amended by adding § 52.76 as follows:

§ 52.76 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for carbon monoxide in the Northern Alaska Intrastate Region by May 31, 1975.

Subpart D—Arizona

5. Section 52.120 is amended by revising paragraph (c) to read as follows:

§ 52.120 Identification of plan.

• • • • •

(c) Supplemental information was submitted on:

(1) March 1, March 2, and May 30, 1972, by the Arizona State Board of Health.

(2) April 11, 1973, and

(3) May 10, 1973.

6. Section 52.122 is amended by adding paragraph (c) as follows:

§ 52.122 Extensions.

• • • • •

(c) Arizona's request under § 55.30 for an 18-month extension for attainment of the national standard for photochemical oxidants (hydrocarbons) in the Phoenix-Tucson Intrastate Region is not applicable since the standard will be attained by May 31, 1975. Arizona's request for an 18-month extension for attainment of the national standards for carbon monoxide in the Phoenix-Tucson intrastate region cannot be granted at this time since it does not adequately satisfy the requirements of § 51.30.

7. Section 52.130 is amended by adding paragraph (b) as follows:

§ 52.130 Source surveillance.

• • • • •

(b) The requirements of § 51.19(d) of this chapter are not met because the plan does not provide procedures for obtaining and maintaining data on actual emission reductions achieved as a result of implementing transportation control measures.

8. Section 52.132 is amended by revising paragraph (a)(3) to read as follows:

§ 52.132 Transportation and land-use controls.

• • • • •

(3) No later than December 30, 1973, the necessary regulations and administrative policies needed to implement other transportation and/or land-use strategies, and emission controls on bulk tank farms and service station underground storage tanks.

9. Subpart D is amended by adding § 52.134 as follows:

§ 52.134 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 are not met because the plan does not provide for attainment and maintenance of the national standards for carbon monoxide in the Phoenix-Tucson intrastate regions by May 31, 1975.

(b) The requirements of § 51.14(a)(2) are not met because the plan does not provide a description of en-

forcement methods, and proposed rules and regulations pertaining to the selected transportation control measures.

(c) The requirements of § 51.14(b) are not met because the plan contains an air bleed, catalytic retrofit, and loaded inspection control measures which cannot be implemented in time to contribute to the attainment of the national standards for carbon monoxide by May 31, 1975. In addition, implementation of the heavy-duty vehicle retrofit and inspection control measures cannot be assured, even by mid-1977.

10. Subpart D is amended by adding § 52.135 as follows:

§ 52.135 Resources.

(a) The requirements of § 51.20 are not met because the transportation control plan does not contain a sufficient description of resources available to the State and local agencies and of additional resources needed to carry out the plan during the 5-year period following submittal.

Subpart F—California

11. Subpart F is amended by adding § 52.240 as follows:

§ 52.240 Control strategy: photochemical oxidants (hydrocarbons) and carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for photochemical oxidants (hydrocarbons) and carbon monoxide in the San Francisco Bay Area, San Diego, Sacramento Valley, San Joaquin Valley, and Southeast Desert Intrastate Regions by May 31, 1975.

Subpart G—Colorado

12. Subpart G is amended by adding § 52.327 as follows:

§ 52.327 Control strategy: Photochemical oxidants (hydrocarbons) and carbon monoxide.

(a) Due to late submission of the plan revisions, the Administrator disapproves this portion of the plan because there was insufficient time to analyze and/or include public comment in the approval/disapproval decision and complete his evaluation by June 15, 1973.

Subpart J—District of Columbia

13. Section 52.470 is amended by revising paragraph (c) to read as follows:

§ 54.470 Identification of plan.

• • • • •

(c) Supplemental information was submitted on:

(1) Control strategies for sulfur oxides and particulate matter were defined by the District's "Implementation Plan for Controlling Sulfur Oxide and Particulate Air Pollutants" which was submitted on August 14, 1970.

(2) April 28, 1972, by the District of Columbia, and

(3) April 19, 1973.

14. Subpart J is amended by adding § 52.474 as follows:

§ 52.474 Legal authority.

(a) The requirements of § 51.11(c) of this chapter are not met because the plan does not contain copies of regulations allowing for improved regional transit that involves purchase of buses and establishment of appropriate routes and express bus lanes; inspection and retrofit of motor vehicles; and imposition of parking surcharges. The plan does not include regulations required for control of heavy-duty vehicle deliveries, reduction of evaporative losses from gas handling and dry cleaning, and imposition of contingency gas rationing measures.

15. Subpart J is amended by adding § 52.479 as follows:

§ 52.479 Source surveillance.

(a) The requirements of § 51.19(d) of this chapter are not met because the plan does not include adequate procedures for determining emission reductions achieved from any of the proposed transportation control measures.

16. Subpart J is amended by adding § 52.483 as follows:

§ 52.483 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(2) of this chapter are not met because the plan only identifies and does not describe enforcement methods and because the plan does not contain proposed rules and regulations for the selected transportation strategies.

(b) The requirements of § 51.14(c) of this chapter are not met because the plan neither demonstrates that proposed control strategies are adequate to attain and maintain national standards, nor does the plan state which contingency control measures specifically would be imposed, and, except for potential gas rationing, whether their predicted effect would be adequate to attain and maintain national standards. Reduction claims for retrofit vapor recovery, and aircraft taxing [sic] controls are unduly optimistic. The inspection and maintenance portion of the plan does not explain how consistent failure criteria have been or will be established; nor does the plan include a program of enforcement to ensure against post-inspection adjustments or modifications. The plan does not explain who will be responsible for implementing the training program for mechanics and other personnel. Though the light-duty retrofit strategy is acceptable, it cannot be implemented by May 31, 1975, and thus is disapproved for attainment by May 31, 1975.

17. Subpart J is amended by adding § 52.484 as follows:

§ 52.484 Resources.

The requirements of § 51.20 of this chapter are not met because the plan does not include a discussion of additional State resources that may be required, including projections for 5 years.

18. Subpart J is amended by adding § 52.485 as follows:

§ 52.485 Intergovernmental cooperation.

The requirements of § 51.21(b)(2) of this chapter are not met because the responsibilities of various agencies in carrying out proposed transportation control measures are not identified.

Subpart O—Illinois

19. Section 52.720 is amended by revising paragraph (c) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) March 13 and April 18, 1972, by the Illinois Environmental Protection Agency,

(2) May 4, 1972, and

(3) April 27, 1973.

20. Subpart O is amended by adding § 52.729 as follows:

§ 52.729 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because transportation and/or land-use control strategies and a demonstration that such strategies along with the Federal motor vehicle control program, will attain and maintain the national standards for carbon monoxide in the Illinois portion of the Metropolitan Chicago interstate region by May 31, 1975, have not been adopted for submission as required.

Subpart P—Indiana

21. Subpart P is amended by revising § 52.777 as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for photochemical oxidants (hydrocarbons) in the Metropolitan Indianapolis Intrastate region by May 31, 1975.

22. Subpart P is amended by adding § 52.785 as follows:

§ 52.785 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for carbon monoxide in the Metropolitan Indianapolis intrastate region by May 31, 1975.

Subpart R—Kansas

23. Section 52.870 is amended by revising paragraph (c) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) March 24, 1972, by the Kansas Department of Health, and

(2) May 29, 1973.

24. Subpart R is amended by adding § 52.881 as follows:

§ 52.881 Control strategy: Carbon monoxide.

(a) Due to late submission of the plan revisions, the Administrator disapproves this section of the plan because there was insufficient time to analyze and/or include public comment in the approval/disapproval decision and complete his evaluation by June 15, 1973.

Subpart T—Louisiana

25. Section 52.970 is amended by revising paragraph (c) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) February 28 and May 8, 1972, by the Louisiana Air Control Commission, and

(2) March 30, 1973.

26. Section 52.973 is amended by revising paragraph (a) to read as follows:

§ 52.973 Control strategy: Photochemical oxidants (hydrocarbons).

(a) The revision to Louisiana's plan for attainment and maintenance of the national standards for photochemical oxidants (hydrocarbons) in the southern Louisiana-southeast Texas interstate region is disapproved because there was insufficient time to analyze and/or include public comment in the approval/disapproval decision by June 15, 1973.

§ 52.979 [Amended]

27. Section 52.979 is amended by revising the attainment date table as follows:

The date "May 31, 1975, c" for the attainment of the national standard for photochemical oxidants (hydrocarbons) in the southern Louisiana-southeast Texas interstate region is replaced with the date "May 31, 1975".

§ 52.982 [Revoked]

28. Section 52.982 is revoked.

Subpart V—Maryland

29. Section 52.1070 is amended by revising paragraph (c) to read as follows:

§ 52.1070 Identification of plans.

* * * * *

(c) Supplemental information was submitted on:

(1) February 25, March 3, March 7, April 4, April 28, and May 8, 1972, by the Maryland Bureau of Air Quality Control, and

(2) April 16, 1973, and May 5, 1973.

30. Section 52.1079 is amended by revising paragraph (a) (1) to read as follows:

§ 52.1079 Transportation and land use controls.

(a) * * *

(1) No later than April 15, 1973, transportation and/or land use control strategies and a demonstration that said strategies, along with Maryland's presently adopted stationary source emission limitations for carbon monoxide and hydrocarbons and the Federal motor vehicle control program, will attain and maintain the national standards for carbon monoxide and photochemical oxidants in the Metropolitan Baltimore intrastate and the Maryland portion of the National Capital interstate regions by May 31, 1975. By such date (Apr. 15, 1973), the State also must submit a detailed timetable for implementing the legislative authority, regulations, and administrative policies required for carrying out the transportation and/or land use control strategies by May 31, 1975.

* * * * *

31. Section 52.1074 is amended by adding paragraph (b) as follows:

§ 52.1074 Legal authority.

* * * * *

(b) The requirements of § 51.11(c) of this chapter are not met because the plan does not contain or show the availability of legal authority claimed to exist.

32. Subpart V is amended by adding § 52.1080 as follows:

§ 52.1080 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of §§ 51.14 (a) (1) and (b) of this chapter are not met because the strategies to control vehicle use are not defined well enough to insure that Maryland will achieve the required degree of emission reduction needed to attain and maintain the national standards for photochemical oxidants and carbon monoxide in the Maryland portion of the National Capital interstate region. Except for proposing an annual inspection program, the plan does not include failure criteria, corrective maintenance provisions, or postinspection enforcement procedures. No information on the availability of adequate supplies of lead-free gasoline is provided. The catalytic retrofit control measure cannot be implemented in time to contribute to attainment of the national standards by May 31, 1975. Furthermore, there is inadequate assurance that a heavy-duty retrofit program or a heavy-duty inspection program can be implemented within the 1975 or 1977 time frame.

(b) The requirements of § 51.14(a) (2) of this chapter are not met because the plan does not specify enforcement methods or contain proposed rules and regulations, administrative procedures, or a schedule for achieving implementation milestones.

(c) The requirements of § 51.14(c) (1) of this chapter are not met because the transportation control strategies are not defined well enough to insure that buildup of pollutant concentrations will not occur.

(d) The requirements of § 51.14(d) of this chapter are not met for the Maryland portion of the National Capital interstate region because a summary of updated emission data was not provided.

(e) The requirements of § 51.14(g) of this chapter are not met for the Maryland portion of the National Capital interstate region because the plan does not include a 3-month summary of current air quality data together with appropriate justification for use of the data and an explanation of their compatibility with correspondingly current emissions data. The requirements of § 51.14(g) of this chapter are not met for the Metropolitan Baltimore intrastate region because the plan does not provide appropriate justification for the use of current air qual-

ity data by virtue of its not providing correspondingly current emissions data.

33. Section 52.1077 is amended by adding paragraph (b) as follows:

§ 52.1077 Source surveillance.

* * * * *

(b) The requirements of § 51.19(d) of this chapter are not met for the Metropolitan Baltimore intrastate region or the Maryland portion of the National Capital interstate region because the plan does not include procedures for determining emission reductions achieved from any of the proposed transportation control measures.

34. Subpart V is amended by adding § 52.1083 as follows:

§ 52.1083 Resources.

The requirements of § 51.20 of this chapter are not met for the Metropolitan Baltimore intrastate region or the Maryland portion of the National Capital interstate region because the plan does not include a discussion of the adequacy of existing State resources and does not say whether any additional State resources, including projections for 5 years, will be required to carry out any of the proposed transportation control measures.

35. Subpart V is amended by adding § 52.1084 as follows:

§ 52.1084 Intergovernmental cooperation.

The requirements of § 51.21(b)(2) of this chapter are not met for the Maryland portion of the National Capital interstate region because the responsibilities of other agencies in carrying out proposed transportation control measures are not identified.

36. Section 52.1072 is amended by adding paragraph (b) as follows:

§ 52.1072 Extensions.

* * * * *

(b) The requested 2-year extension for attainment of the national carbon monoxide and photochemical oxidant standards in the Metropolitan Baltimore intrastate and in the Maryland portion of the National Capital interstate regions cannot be granted because the proposed Maryland control strategies do not provide for attainment of these standards by May 31, 1975, or attainment of these standards as expeditiously as practicable, and do not provide for interim control measures.

Subpart W—Massachusetts

37. Subpart W is amended by adding § 52.1129 as follows:

§ 52.1129 Control strategy: Photochemical oxidants (hydrocarbons) and carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for photochemical oxidants (hydrocarbons) and carbon monoxide in the Metropolitan Boston intrastate region and for carbon monoxide in Massachusetts' portion of the Hartford-New Haven-Springfield interstate region by May 31, 1975.

Subpart Y—Minnesota

38. Subpart Y is amended by adding § 52.1228 as follows:

§ 52.1228 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for carbon monoxide in the Minneapolis-St. Paul intrastate region by May 31, 1975.

Subpart AA—Missouri

39. Section 52.1320 is amended by revising paragraph (c) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) February 28, March 27, May 2, May 11, July 12, and August 8, 1972, by the Missouri Air Conservation Commission, and

(2) May 11 and 21, 1973.

40. Subpart AA is amended by adding § 52.1334 as follows:

§ 52.1334 Control strategy: Carbon monoxide.

(a) Due to the late submission of the plan revisions, the Administrator disapproves this portion of the plan because there was insufficient time to analyze and/or include public comment in the approval/disapproval decision and complete his evaluation by June 15, 1973.

Subpart FF—New Jersey

41. Subpart FF is amended by adding § 52.1582 as follows:

§ 52.1582 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide, New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Interstate Regions.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standard for photochemical oxidants (hydrocarbons) in the New Jersey portions of the New Jersey-New York-Connecticut interstate and Metropolitan Philadelphia interstate regions by May 31, 1975.

(b) The requirements of § 51.14 of this chapter are not met because the plan does not provide for the attainment and maintenance of the national standard for carbon monoxide in the New Jersey counties of Essex, Camden, and Mercer.

Subpart HH—New York

42. Section 52.1670 is amended by revising paragraph (c) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) Supplemental information was submitted on:

(1) February 9, 11, and 14 and March 10, 1972, and

(2) April 17, 19, and 30, May 2, 16, and 21 and June 11, 1973.

43. Section 52.1672 is amended by adding paragraph (c) as follows:

§ 52.1672 Extensions.

* * * * *

(c) The Administrator hereby extends until December 31, 1976, the attainment date for the:

(1) National standards for carbon monoxide in the New York portion of the New Jersey-New York-Connecticut interstate region.

(2) National standard for photochemical oxidants in the New York portion of the New Jersey-New York-Connecticut interstate region.

44. In § 52.1682 the table is revised to read as follows:

§ 52.1682 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information in New York's plan, except where noted.

POLLUTANTS

Region	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)
	Primary	Secondary	Primary	Secondary			
Niagara Frontier Intrastate	(a)	(c)	(b)	(c)	(a)	(a)	(a)
Champion Valley Intrastate	(e)	(e)	(e)	(e)	(e)	(e)	(e)
Central New York Intrastate	(a)	(c)	(e)	(e)	(e)	May *1975*	(a)
Genesee-Finger Lakes Intrastate	(a)	(a)	(a)	July *1977*	(a)	(a)	May *1975*
Hudson Valley Intrastate	(a)	(a)	(a)	July *1977*	(e)	(e)	(e)
Southern Tier East Intrastate	(d)	(a)	(d)	July 1977	(e)	(e)	(e)
New Jersey-New York-Connecticut Interstate	(b)	(c)	(a)	(c)	(a)	December 1976	December *1976*

NOTE: Dates or footnotes that are in italic are proposed by the Administrator because the plan either did not provide a specific date or the date provided was not acceptable.

a 3 years from plan approval or promulgation.
b 5 years from plan approval or promulgation.
c 18-month extension granted.
d Air quality levels presently below primary standards.
e Air quality levels presently below secondary standards.

45. Section 52.1683 is revised to read as follows:

§ 52.1683 Transportation and land use controls.

(a) To complete the requirements of § 51.11 and § 51.14 of this chapter, the Governor of New York must submit to the Administrator: (1) No later than July 30, 1973, the legislative authority that is needed for carrying out the transportation and/or land use control strategies; (2) No later than December 30, 1973, the necessary adopted regulations and administrative policies needed to implement such strategies.

Subpart KK—Ohio

46. Subpart KK is amended by adding § 52.1877 as follows:

§ 52.1877 Control strategy: Photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14 of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for photochemical oxidants (hydrocarbons) in the Metropolitan Cincinnati interstate, Metropolitan Dayton intrastate, and Metropolitan Toledo interstate regions by May 31, 1975.

Subpart MM—Oregon

47. Section 52.1970 is amended by revising paragraph (c) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) Supplemental information was submitted on May 3, 1972, October 26, 1972, and April 13, 1973.

48. Subpart is amended by adding § 52.1976 as follows:

§ 52.1976 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(2) of this chapter are not met because the transportation control plan does not contain an adequate description of proposed enforcement methods, proposed rules and regulations, proposed administrative procedures to be used, and schedule of the dates by which significant steps in certain strategies will be achieved.

(b) The requirements of § 51.14(c) of this chapter are not met because the transportation control plan for the Oregon portion of the Portland interstate region does not assure attainment of the national standard for carbon monoxide and photochemical oxidants (hydrocarbons) by May 31, 1975. Although the measures included in the transportation control plan are generally acceptable to the Administrator, the emissions reductions forecast to result from programs for motor vehicle inspection and maintenance, traffic flow improvement, and increased transit usage are unrealistically high. There are no measures as required by § 51.14(c) of this chapter to

prevent traffic flow improvements from leading to an increase in traffic, thereby negating the anticipated emission reduction.

49. Subpart MM is amended by adding § 52.1977 as follows:

§ 52.1977 Resources.

(a) The requirements of § 51.20 of this chapter are not met because the transportation control plan does not contain a sufficient description of resources available to the State and local agencies and of additional resources needed to carry out the plan during the 5-year period following submittal.

50. Subpart MM is amended by adding § 52.1978 as follows:

§ 52.1978 Source surveillance.

(a) The requirements of § 51.19(d) of this chapter are not met because the transportation control plan does not contain provisions for determining what emission reductions are actually achieved by the inspection and maintenance strategy.

Subpart NN—Pennsylvania

51. Section 52.2020 is amended by revising paragraph (c) to read as follows:

§ 52.2020 Identification of plan.

• • • • •

(c) Supplemental information was submitted on:

(1) March 17 and 27, and May 4, 1972, by the Bureau of Air Quality and Noise Control, Pennsylvania Department of Environmental Resources,

(2) May 5, 1972, and

(3) April 13, 1973.

52. Section 52.2030 is amended by adding paragraph (c) as follows:

§ 52.2030 Source surveillance.

• • • • •

(c) The requirements of § 51.19(c) of this chapter are not met because the plan does not provide procedures for obtaining and maintaining data on actual emission reductions achieved as a result of implementing transportation control measures.

53. Section 52.2031 is amended by adding paragraph (b) as follows:

§ 52.2031 Resources.

• • • • •

(b) The requirements of § 51.20 of this chapter are not met because the plan does not contain a sufficient description of resources available to the State and local agencies and of additional resources needed to carry out the plan during the 5-year period following submittal.

54. Section 52.2032 is revised to read as follows.

§ 52.2032 Intergovernmental cooperation.

(a) The requirements of § 51.21(b) of this chapter are not met because the plan does not identify other State or local agencies or their responsibilities for implementing and carrying out designated portions of the plan.

(b) The requirements of § 51.21(c) of this chapter are not met because the plan does not indicate that Pennsylvania will transmit to the neighboring States of Maryland, New York, and West Virginia data about factors which may significantly affect air quality in those States.

55. Subpart NN is amended by adding § 52.2036 as follows:

§ 52.2036 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of §§ 51.14(b) and 51.14(c) of this chapter are not met because the strategies to restrain vehicle use are not defined and qualified well enough to insure that the necessary reductions in carbon monoxide and hydrocarbons will be achieved; the plan does not provide provisions for preventing increases in concentrations resulting from traffic increases; and the plan lacks a summary of data and calculations used to develop the proposed control measures.

Subpart SS—Texas

56. Section 52.2270 is amended by revising paragraph (c) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) February 25 and May 2 and 3, 1972, by the Texas Air Control Board,
(2) July 31, 1972, and
(3) April 15 and 23, 1973.

57. Subpart SS is amended by adding § 52.2282 as follows:

§ 52.2282 Public hearings.

(a) The requirements of § 51.4 of this chapter are not met because principal portions of the revised plan were not made available to the public for inspection and comment prior to the hearing.

Subpart TT—Utah

58. Section 52.2320 is amended by revising paragraph (c) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) Supplementary information was submitted on May 8, 1972, and April 13, 1973.

59. Section 52.2322 is amended by adding paragraph (a) as follows:

§ 52.2322 Extensions.

(a) Utah's request for a 2-year extension for attainment of the national standard for carbon monoxide in the Wasatch Front intrastate region cannot be granted since it does not contain adequate information showing why the inspection program cannot be in operation in time to attain the standard by 1975; because the State has not considered and applied reasonably available alternative means of attaining the standard, including measures to reduce vehicle miles traveled, and because a phased implementation of the inspection program consisting of interim steps has not been discussed or proposed.

60. Section 52.2329 is amended by adding paragraph (b) as follows:

§ 52.2329 Resources.

* * * * *

(b) The requirements of § 51.20 of this chapter are not met because the transportation control plan does not contain a sufficient description of resources available to the State and local agencies and of additional resources needed to carry out the plan during the 5-year period following submittal.

61. Subpart TT is amended by adding § 52.2335 as follows:

§ 52.2335 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14(a)(2) of this chapter are not met because the transportation control plan does not contain an adequate description of proposed enforcement methods and designation of enforcement responsibilities, proposed rules and regulations, proposed administrative procedures to be used, and schedule of the dates by which significant steps in certain strategies will be achieved.

(b) The requirements of § 51.14(c) of this chapter are not met because the plan does not provide for the attainment and maintenance of the national standards for carbon monoxide in the Wasatch Front Intrastate Region by May 31, 1975.

62. Subpart TT is amended by adding § 52.2336 as follows:

§ 52.2336 Source surveillance.

(a) The requirements of § 51.19(d) of this chapter are not met because the transportation control plan does not indicate how surveillance will be accomplished to determine that the claimed emission reductions are being achieved.

Subpart VV—Virginia

63. Section 52.2420 is amended by revising paragraph (c) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) May 4, 1972, by the Virginia Air Pollution Control Board, and

(2) April 11 and May 30, 1973.

64. Section 52.2424 is amended by adding paragraph (b) as follows:

§ 52.2424 General requirements.

* * * * *

(b) The requirements of § 51.10(b) of this chapter are not met because the plan does not provide for attainment and maintenance of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) as expeditiously as practicable, as evidenced by the State's failure to propose interim control measures to be implemented during the 2-year period for which an extension to attain the national standards was requested.

65. Section 52.2427 is amended by adding paragraph (c) as follows:

§ 52.2427. Source surveillance.

* * * * *

(c) The requirements of § 51.19(d) of this chapter are not met because the plan does not provide procedures for determining actual emission reductions achieved as a result of implementing the proposed transportation control measures.

66. Section 52.2428 is amended by adding paragraph (c) as follows:

§ 52.2428 Request for 2-year extensions.

* * * * *

(c) The 2-year extension requested for attainment and maintenance of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) in Virginia's portion of the National Capital interstate region cannot be granted because the plan does not provide reasonable interim control measures.

§ 52.2429 [Amended]

67. In § 52.2429, the attainment date table is amended by replacing the date January 1975 for attainment of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the National Capital interstate region with the date "May 31, 1975."

68. Subpart VV is amended by adding § 52.2430 as follows:

§ 52.2430 Legal authority.

(a) The requirements of § 51.11(c) of this chapter are not met because the plan does not identify or provide copies of laws or regulations, necessary for carrying out the proposed transportation control measures.

69. Subpart VV is amended by adding § 52.2431 as follows:

§ 52.2431 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(2) of this chapter are not met because the plan does not provide a description of enforcement methods for all control measures, proposed rules and regulations for all control measures, or a schedule designating dates by which significant steps of the plan and each control measure will be implemented.

(b) The requirements of § 51.14(b) of this chapter are not met because the plan contains a catalytic retrofit control measure which cannot be implemented in time to contribute to the attainment of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) by May 31, 1975.

(c) The requirements of § 51.14(c) of this chapter are not met because the plan does not demonstrate that

the proposed control measures are adequate for attainment and maintenance of the national standards.

(d) The requirements of § 51.14(g) of this chapter are not met because a justification is not provided in the plan for the air quality data used as a baseline for plan development.

70. Subpart VV is amended by adding § 52.2432 as follows:

§ 52.2432 Resources.

(a) The requirements of § 51.20 of this chapter are not met because the plan does not contain a sufficient description of resources available to the State and local agencies, and of additional resources needed to carry out the plan during the 5-year period following submittal.

71. Subpart VV is amended by adding § 52.2433 as follows:

§ 52.2433 Intergovernmental cooperation.

(a) The requirements of § 51.21 of this chapter are not met because the plan does not adequately identify the State and local agencies, and their responsibilities, involved in carrying out the proposed transportation control measures.

72. Subpart VV is amended by adding § 52.2434 as follows:

§ 52.2434 Transportation and land use controls.

(a) To complete the requirements of §§ 51.11(b) and 51.14 of this chapter, the Governor of Virginia must submit to the Administrator:

(1) No later than July 31, 1973, the legislative authority that is needed for carrying out the required transportation control alternatives.

(2) No later than December 31, 1973, the necessary adopted regulations and administrative policies needed to implement the transportation control alternatives.

Subpart WW—Washington

73. Section 52.2470 is amended by revising paragraph (c) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) Supplemental information was submitted on January 28, 1972, May 5, 1972, April 16, 1973, and May 21, 1973.

74. Subpart WW is amended by adding § 52.2477 as follows:

§ 52.2477 Source surveillance.

(a) The requirements of § 51.19(d) of this chapter are not met because procedures are not described for monitoring the status of compliance of the traffic-signal optimization programs, the heavy-duty vehicle exclusion programs, and the public transit programs in the Puget Sound intrastate region and in the Eastern Washington-Northern Idaho interstate region.

75. Subpart WW is amended by adding § 52.2481 as follows:

§ 52.2481 Control strategy: Control monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(2) of this chapter are not met because the transportation control plan does not contain an adequate description of proposed enforcement methods, proposed rules and regulations, proposed administrative procedures to be used, and schedule of dates by which significant steps in the inspection strategy will be achieved.

(b) The requirements of § 51.14(b) of this chapter are not met because the plan contains a loaded inspection control measure which cannot be implemented in time to contribute to the attainment of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) by May 31, 1975.

(c) The requirements of § 51.14(c) of this chapter are not met because the transportation control plan does

not assure attainment of national standards for carbon monoxide in the Puget Sound intrastate region and in the Washington portion of the Eastern Washington-Northern Idaho interstate region and of national standards for photochemical oxidants (hydrocarbons) in the Puget Sound intrastate region by May 31, 1975.

76. Subpart WW is amended by adding § 52.2482 as follows:

§ 52.2482 Air quality surveillance.

(a) The requirements of § 51.17(a)(1) of this chapter are not met because the transportation control plan does not provide adequate assurance that air quality surveillance systems sufficient to establish the efficacy of the selected transportation control measures in attaining standards in both the Puget Sound intrastate and Eastern Washington-Northern Idaho interstate regions will be implemented and operated.

77. Subpart WW is amended by adding § 52.2483 as follows:

§ 52.2483 Resources.

(a) The requirements of § 51.20 of this chapter are not met because the transportation control plan does not contain a sufficient description of resources available to the State and local agencies and of additional resources needed to carry out the plan during the 5-year period following submittal.

[FR Doc. 73-12351 Filed 6-21-73; 8:45 am]

[40 CFR Part 52]

CALIFORNIA AIR QUALITY CONTROL

Approval and Promulgation of Implementation Plans

This notice of proposed rulemaking sets forth a revised transportation control plan for the Metropolitan Los Angeles Intrastate Air Quality Control Region (hereinafter, Los Angeles AQCR or South Coast Air Basin).

BACKGROUND

In accordance with an order of the U.S. District Court for the Central District of California, November 16, 1972, a transportation control plan for the Los Angeles AQCR was proposed on January 15, 1973, and published in the FEDERAL REGISTER of January 22, 1973, with minor corrections on February 7, 1973 (38 FR 2194, 3526). Pursuant to the notice published on February 1, 1973 (38 FR 3085), public hearings were held at nine locations throughout the South Coast Air Basin, over a three-week period from March 5 to March 22, 1973. 240 witnesses testified on all aspects of the proposed plan and on various alternatives. The complete transcript is available for inspection at the Federal Information Center. 300 North Los Angeles Street, Room 1011, Los Angeles, California 90012; the U.S. Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111, and the U.S. Environmental Protection Agency, Office of Public Affairs, Room W311, 401 M Street, S.W., Washington, D.C. 20460.

A final transportation control plan will be promulgated for the Los Angeles AQCR on August 15, 1973, along with plans for other AQCRs needing federal promulgation. This revised proposal is being set forth at this time in order to solicit public comment on the current thinking of the Agency.

SUMMARY

Studies available to the Administrator at present indicate that a reduction on the order of 90 percent would be necessary in projected 1975 emissions of reactive hydrocarbons in order to attain the National Primary Ambient Air Quality Standard for photochemical oxidants in the Los Angeles AQCR. Much of that reduction will take place due to control measures submitted by the State and already approved, but these measures are not enough to meet the standards. The Administrator has concluded that an extension to 1977 of the deadline for achieving the standards under section 110(e) of the Clean Air Act, is justified because the necessary technology or other alternatives are not available and will not be available soon enough to permit full compliance. In reaching this conclusion the Agency has considered and applied as a part of its plan reasonably available alternative means of attaining the primary standard.

The plan set forth herein provides for the application of its requirements to all emission sources other than motor vehicles no later than May 31, 1975, as required by section 110(e)(2)(A), and provides for reasonable interim measures of control for motor vehicles prior to 1977.

Most of this plan concerns the reasonable and apparently available means of reducing oxidants (as well as nitrogen dioxide), including requirements for bus and carpool lanes on freeways and major streets, reductions in off-street public parking, limitations on the construction of additional parking facilities, limitations on motorcycles, mandatory inspection and maintenance of light-duty vehicles, and a lid on further increases in gasoline consumption. These wil be required prior to 1975 in most cases.

Other portions of the plan concern measures which appear reasonable but do not, at present appear to have been developed to the point of application in 1975, due to technical problems related to retrofit devices such as

catalytic converters. These will be required beginning in 1976 with full implementation by 1977, although they will be required earlier if they become available earlier. Even if all the reasonable measures mentioned above are imposed, it is quite possible, indeed probable, that the national standard for photochemical oxidants cannot be met in the Los Angeles AQCR by 1977. Achievement of the nitrogen dioxide standard is likewise uncertain. Under the Clean Air Act as written, the Agency has no choice but to include in this plan a measure which can achieve the standards in 1977 even if it appears impracticable and unworkable. Consequently, gasoline and diesel fuel limitations of whatever degree necessary have been included for 1977. (An alternative to diesel fuel reduction would have been drastic cuts in aircraft flights or relocation of stationary sources.) If implemented, this would achieve the standards for both photochemical oxidants and nitrogen dioxide. However, the Agency will utilize every means available to avoid the need to impose impractical measures to reach that goal by 1977. It should be noted that grounds for a one-year extension of the compliance date for certain sources under section 110(f) of the Clean Air Act may arise, meaning that certain requirements of this plan may not be imposed until May 31, 1978.

THE NEED FOR MASS TRANSIT

The development of large-scale mass transit facilities in the Los Angeles area is essential to any effort to reduce automotive pollution through restrictions on vehicle use. The planning, acquisition, and operation of a mass transit system is, and should remain, a local responsibility. However, the automobile problem does not follow the boundaries of counties or cities in the South Coast Air Basin and current planning and operating agencies for mass transit do not appear to have sufficient authority to provide for adequate regional public transit. Consequently, the Agency strongly endorses the concept of a regionwide transportation planning and operation authority.

The Agency also actively encourages the immediate and large-scale purchase of additional public transportation facilities, most specifically including additional buses and an increased examination of the feasibility of rail transit. To create conditions conducive to rapid bus transit, several of the measures in this plan give preferential treatment to buses.

The Agency also encourages close examination of such measures as fare reductions, bicycle lanes, provision of jitney service and more minibuses, fringe parking lots for buses and carpools, special parking privileges for carpools, on-street parking prohibitions for non-residents, state taxes to encourage VMT reductions while raising revenue to benefit mass transit, and provision of bus tokens in place of free parking privileges.

State and Local Implementation of Control Measures

In order to preserve the scheme of the Clean Air Act whereby local pollution problems will be dealt with primarily at the local level, the Agency will require State and local governmental entities to take actions whenever possible, and will not involve the Federal government in the administration of local programs and in direct enforcement against individual citizens. Requirements of this sort are proposed with regard to bus/carpool lanes, motorcycle controls, public parking facilities, inspection/maintenance, and gas limitations. Appropriate governmental entities will also be required to submit compliance schedules for these programs with complete details on their implementation.

Testimony both for and against controls on motorcycles was received, including commitments from motorcycle interests to bring the present high level of emissions down to the vicinity of those achieved by automobiles. Since neither widespread testing methods nor technology appears to exist at present, it is proposed that the worst polluters—two-stroke motorcycles—not be allowed to operate during the smog-prone daylight hours in the

summer months within the Basin. In addition, an overall lid on the increase in numbers of motorcycles is proposed to prevent counterproductive shifts from automobiles to motorcycles as a result of other elements of the control strategy. The Agency will evaluate the feasibility of establishing emission standards for new motorcycles and will evaluate the availability of motorcycle emission control technology for meeting emission standards and for retrofit.

Publicly owned off-street parking facilities will be required to reduce their number of parking spaces in an effort to reduce the high number of low-occupancy private vehicles entering the Central Business Districts and other congested areas, and to promote voluntary carpooling and use of bus transit. Comment is invited on the possibility of extending this control to privately owned parking facilities, either by outright reduction in spaces or by imposing regulatory fees.

The State of California is proceeding with an inspection system, which will result in emission reductions. The proposal herein will require that such system be expanded to require mandatory annual inspection of all vehicles.

Catalytic converters would be required in 1976-77 for many pre-1975 vehicles. It cannot be concluded at present that the technology for retrofit converters has developed to the point that they could be installed effectively as "retrofit" devices in 1975. However, the Agency will monitor the status of development of this technology and accelerate the dates if feasible.

If the State submits adequate control measures in any of these areas, or substitute control measures which will achieve comparable reductions in pollution, then the Administrator can approve the State's measures rather than promulgate his own. However, the requirements to submit adequate compliance schedules and take other action will be enforced on a timely basis if the Agency's measures are promulgated. Therefore, it is suggested that planning to comply with these measures not be delayed in hopes of approval of substitute measures.

Revised Control Strategy—Mobile Sources

Substantial testimony at the public hearings supported the concept of converting lanes on existing freeways and streets to bus or bus/carpool lanes. The measures proposed herein will require conversion of some lanes on all major streets and highways, and it is expected that a widespread network of bus/carpool lanes will provide substantial incentives to the use of buses and carpools while making private vehicle travel by single drivers relatively less attractive. Planning for specific lanes is expected to take place at the local level, under the overall requirements herein. Exceptions to or modifications of the broad requirements will be approved when specifically justified. Since it will take some time before sufficient buses are available to carry the passengers currently using these lanes in private cars, these proposed regulations would permit the use of the lanes by carpools with three or more persons in the vehicle. The Department of Transportation recommended total conversion of all freeways and major arterial streets to the exclusive use of buses and carpools during rush hours, but it is believed that such a measure implemented in a short time frame would not provide sufficient transportation for the area, considering the number of persons who must travel to work and the large variety of trip origins and destinations.

Another provision would limit further construction of new parking areas in the Basin.

The Agency's earlier proposal for gasoline rationing was required to meet the court order. A system of rationing in the ordinary sense is not being proposed at this time. Instead, it is proposed that the continuing growth in vehicle miles traveled within the Basin be stopped by limiting the continued growth in gasoline consumption. Gasoline consumption has been increasing approximately 4.5 percent per year. It is proposed that distributors not be permitted to deliver to retail outlets any more gasoline than was distributed during the "base year" of July 1972—June 1973. No requirements will

be placed on individual motorists, unless the State of California chooses to do so. The impact of this limitation will be much less severe and far more easily administered than a rationing system of great magnitude as was earlier proposed. In fact, the limitations on vehicle miles traveled which are expected to result from the conversion of existing lanes to bus/carpool lanes, as well as the reductions in publicly owned parking spaces, expansion of service of bus companies, and various local efforts to shift to less-polluting transportation, may very well reduce the demand for gasoline consumption sufficiently that the ceiling on increase in consumption will have a relatively light impact. This approach of combining a number of measures rather than relying on a single measure was supported by numerous witnesses at the public hearings.

Regulations for gaseous fuel conversion are not being reproposed at this time due to the limited supply of gaseous fuels and the likelihood that the fleets to which the regulation would be applicable will continue to acquire the newer, cleaner gasoline-powered vehicles. Evaporative controls are not being reproposed due to the lack of demonstrated technology and the low likelihood of its development.

Control Strategy—Stationary Sources

In many instances, the controls on stationary sources in the South Coast Basin are among the most stringent in the country. It should be noted, however, that stationary source pollution could threaten the attainment and maintenance of the national standards even if automotive pollution were totally eliminated. Thus, serious consideration should be given to the exercise of land-use controls to control the growth of stationary sources, as well as to developing more stringent emission controls. The Agency is conducting an emission inventory of stationary sources and examining the question of reactivity of hydrocarbons, which may substantially change the emission numbers for stationary sources.

The Agency is considering modifications to the regulations proposed in January on vapor collection and dis-

posal systems. The modifications would limit coverage to gasoline rather than other organic solvents, raise the degree of control necessary, and require control earlier for large tanks. Consideration is also being given to requiring use of water-based solvents and solid coatings for surface coating and to requiring use of non-photochemically-reactive solvents, rather than merely encouraging such use. EPA-industry studies underway at present are expected to result in further considerable reactive hydrocarbon and organic emission reductions. Although proposed regulations for control of drycleaning solvent evaporation, gasoline storage and transfer, degreasing operations, and organic solvent usage are not printed in this notice, regulations proposed for other states today indicate the kinds of measures being considered and it is anticipated that regulations of this sort will be promulgated for the South Coast Basin. (See table on Compilation of Control Strategy Effects)

COMPILATION OF CONTROL STRATEGY EFFECTS
(TONS/DAY REACTIVE HYDROCARBONS)

	1970 Emissions	1977 Emissions [1] Without EPA Plan	1977 Emissions [2] With EPA Plan (30% VMT Reduction)	1977 Emissions With 100% Gasoline and 60% Diesel Fuel Reduction
LDV Exhaust	768	319	146	0
LDV Evap. Crankcase	396	118	83	0
HDV Exhaust	68	48	34	0
HDV Evap. Crankcase	18	8	6	0
Gasoline Marketing	137	151	14	0
HDV Diesel Exhaust	26	24	24	9
Motorcycles:				
2-Stroke	20	33	0	0
4-Stroke	7	12	9	0
Aircraft	38	25	25	25
Ships, Railroads	5	6	6	6
Stationary	118	104	72	72
	1601	848	[419] [3]	112 [4]

[1] Includes growth in sources from 1970. Emission reductions are due to federal/state controls on new vehicles, new aircraft, state VSAD and PCV retrofit on existing vehicles, and state controls on stationary sources.

[2] Includes all measures in this proposal except an impractical degree of gasoline and diesel fuel reduction, a relocation of stationery [sic] sources, or a drastic cut in aircraft flights.

[3] 419 tons/day are expected to prevent the worst oxidant readings from exceeding .20 to .25 ppm, and to reduce the number of hours with readings above .08 ppm by 75% to 90%.

[4] 112 tons/day are allowable to achieve the ambient air quality standard for photochemical oxidants of .08 ppm.

Submittal of Written Comments

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Regional Administrator, EPA, 100 California Street, San Francisco CA 94111. All relevant comments received before July 10, 1973, will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection at the regional office. The final promulgation of regulations for the Metropolitan Los Angeles Intrastate Air Quality Control Region will take place on August 15, 1973. This notice of proposed rulemaking is issued under the authority of section 110(c) and section 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

Dated: June 22, 1973.

Robert W. Fri,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I, title 40, of the Code of Federal Regulations by adding the following:

Subpart F—California

1. Subpart F is amended by adding the following sections:

§ 52.241 Gasoline limitations.

(a) Definitions:

(1) The term "base year" means the consecutive twelve month period commencing on July 1, 1972, and ending June 30, 1973.

(2) The term "distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) The term "retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This section is applicable in the Metropolitan Los Angeles Intrastate AQCR (hereinafter the "AQCR"), to all distributors of gasoline to any retail outlet in this area and to the owners of all retail outlets in this area.

(c) (1) Beginning July 1, 1974, the State of California shall implement regulations limiting the total gallonage delivered to retail outlets in the AQCR to the amount delivered to such outlets during the base year.

(2) Beginning May 31, 1977, the State of California shall implement regulations limiting the total gallonage of gasoline and diesel fuel delivered to retail outlets to that amount which, when combusted, will not result in the ambient air quality standard being exceeded. The State shall by January 1, 1977, submit to the Administrator regulations to accomplish this limitation and specifying the amount of limitation necessary.

(d) In order for the State to determine the amount of gasoline delivered during the base year and years during which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the AQCR during the base year and years during which control is in effect. For each year during which control is in effect, the owner of each retail outlet to which this section applies shall provide the State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports as it may deem necessary for the implementation of this section.

(e) The State of California shall submit no later than October 1, 1973, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraphs (c) (1) and (d) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c)(1) of this section is delivered to retail outlets in the AQCR. Such date shall be no later than March 30, 1974.

(2) A date by which any report necessary for establishing such procedures will be furnished to the State by the distributors. Such date shall be no later than January 1, 1974.

(3) An agency responsible for implementation and monitoring of this program.

(f) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.242 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program"—a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control-related maintenance and requiring that maintenance be performed.

(2) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles Intrastate Air Quality Control Region.

(c) The State of California shall establish an inspection and maintenance program applicable to all light duty vehicles which operate on streets or highways over which it has ownership or control. No later than March 1, 1974, the State shall submit legally adopted regulations to

EPA establishing such a program. The regulations shall include:

(1) Provisions for inspection of all motor vehicles at periodic intervals no more than one year apart by means of a loaded test.

(2) Provisions for inspection failure criteria consistent with the emissions reductions claimed in the plan for the strategy. These criteria shall include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to insure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to insure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Designation of an agency or agencies responsible for conducting overseeing, and enforcing the inspection and maintenance program.

(d) After January 1, 1975, the State shall not register or allow to operate on its streets or highways any light duty vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After January 1, 1975, no owner of a light duty vehicle shall operate or allow the operation of such vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(f) The State of California shall submit no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce an inspec-

tion and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption.

(1) The compliance schedule shall also include:

(i) The date by which the State will recommend needed legislation to the State legislature.

(ii) The date by which necessary equipment will be ordered.

(iii) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation will be submitted.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.243 Bus/carpool lanes.

(a) Definitions:

(1) "Carpool"—a vehicle containing three or more persons.

(2) "Bus/carpool lane"—a lane on a street or highway open only to buses or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Major street or highway"—any street or highway which meets the criteria given in paragraph (b) (4) (ii) and (iii) of this section.

(b) The following constitutes the first stage of the bus/carpool control strategy for the Metropolitan Los Angeles Intrastate Air Quality Control Region.

(1) Each incorporated city within the Metropolitan Los Angeles Air Quality Control Region shall establish bus/carpool lanes on the major streets and highways (as defined herein) over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(2) Each county within the Metropolitan Los Angeles Air Quality Control Region shall establish bus/carpool lanes on the major streets and highways (as defined herein) within the Region over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(3) The State of California shall establish bus/carpool lanes on the major streets and highways (as defined herein) within the Region over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(4) Each of the governmental entities named in the previous three subparagraphs shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) If a street or highway has four or more traffic lanes in one direction, at least one of these lanes must be open only to buses or buses and carpools) at all times. If only one lane is open to buses (or buses and carpools) at all times, a second lane must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a street or highway has three traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a street or highway, or lane or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained

from the Administrator. The application for exemption shall not be submitted and will not be accepted after September 1, 1973. Special circumstances justifying the need for an exemption or modification (such as inappropriateness of use by buses or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a lane or making a right turn) must be given in detail with the application.

(v) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Twenty-five percent of the lane mileage for each of the governmental entities must be established and needed signs must be installed by March 1, 1974; fifty percent by June 1, 1974; seventy-five percent by September 1, 1974; one hundred percent by December 1, 1974.

(vi) Bus/carpool lanes must be prominently indicated by distinctive painted lines, pylons, or physical barrier.

(vii) A signed statement by the chief executive officer of each governmental entity or his designee will identify the sources and amounts of funds for all projects.

(5) Buses shall have the right of way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "No Left Turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraph (b) of this section shall convert existing on-street parking spaces to use as motor vehicle traffic lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section.

(c) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113

of the Clean Air Act. With regard to compliance schedules, a governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.244 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a facility.

(2) "Modification" means any change to a parking facility which increases the motor vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the motor vehicle capacity of such facility.

(4) "Commenced" means the date on which an owner or operator, and a contractor to or affiliate of such owner or operator, enter into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in the Metropolitan Los Angeles Air Quality Control Region.

(c) No person, after the date of this regulation, shall commence construction of any new parking facility or modify or enlarge any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal Air Quality Standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for con-

struction of any new parking facility or any modification or enlargement of any existing parking facility such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include but not be limited to a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the proposed facility.
(ii) The total motor vehicle capacity of the proposed facility.
(iii) The normal hours of operation of the proposed facility and the enterprises and activities which it serves.
(iv) The number of people using or engaging in any enterprises or activities which the proposed facility will serve.
(v) The number of motor vehicles using the proposed facility on an average hourly basis and a peak hour basis.
(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the proposed facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include but not be limited to:

(i) Full consideration of all facts contained in the application.
(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a facility covered by this section shall be issued without notice and

opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of 40 CFR 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to seven days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.245 Limitation of public parking.

(a) Definitions:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of ten or more motor vehicles on a temporary basis.

(b) Off-street parking facilities:

(1) Each governmental entity or public agency owning or operating an off-street parking facility located within the Metropolitan Los Angeles Air Quality Control Region shall, by October 1, 1973, report to the Administrator the number of motor vehicle parking spaces in each such facility under its ownership or control.

(2) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (b)(1) of this section shall reduce the number of motor vehicle parking spaces in each such facility from the number in existence as of October 1, 1973, according to the following schedule:

By January 31, 1974—a reduction of 5%
By July 31, 1974—a reduction of 10%
By December 31, 1974—a reduction of 15%
By April 30, 1975—a reduction of 20%

(3) Each such owner or operator of an off-street parking facility subject to the requirements of paragraph (b)(2) of this section shall submit to the Administrator, no later than October 31, 1973, a detailed compliance schedule showing the steps it will take to achieve the required reduction in motor vehicle parking spaces. Such

schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the spaces eliminated pursuant to this regulation on which parking is not permitted.

(c) Failure to submit a compliance schedule as required by this regulation shall render the person so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of a parking facility who allows any motor vehicle to be parked on any parking space which has been eliminated pursuant to this regulation, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.246 Motorcycle limitation program.

(a) Definitions:

(1) "Motorcycle"—any self-propelled two or three wheeled motor vehicle capable of carrying one or more persons.

(2) "Four stroke engine"—an internal combustion engine which requires four strokes of the engine's pistons for a complete cycle of operation.

(3) "Two stroke engine"—an internal combustion engine which requires two strokes of the engine's pistons for a complete cycle of operation.

(4) "Registration"—the action of a State allowing a vehicle to be operated on the streets and highways in that State during a defined period of time.

(5) "Registration period"—that period of time for which a vehicle is allowed to be used within the State.

(b) This section is applicable in the Metropolitan Los Angeles Intrastate Air Quality Control Region.

(c) As of January 1, 1974, or any registration period which commences during the calendar year 1974, the State of California shall not register in the Metropolitan Los Angeles Intrastate Air Quality Control Region more motorcycles than the total number registered in 1973.

(d) As of May 1, 1974, the State of California shall prohibit the operation of two stroke motorcycles in the Metropolitan Los Angeles Intrastate Air Quality Control Region between 6:00 a.m. and 8:00 p.m. during the months of May, June, July, August, September, and October.

(e) After January 1, 1974, no person shall operate any motorcycle on the streets and highways of the State within the Metropolitan Los Angeles Intrastate AQCR which is not validly registered by the State of California or by another State.

(f) No later than October 1, 1973, the State shall submit a detailed compliance schedule showing steps it will take to implement and enforce these requirements, including the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State will adopt procedures necessary to limit the number of motorcycles registered as required above, to restrict the operation of two-stroke motorcycles as required above and to require the registration of all motorcycles operated as required above.

(2) Proposed procedures to ensure that no motorcycle will be registered by the State in a county other than that of the owner's legal residence.

(3) A date by which such procedures will go into effect. Such date shall be no later than January 1, 1974.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.248 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles Intrastate Air Quality Control Region.

(d) The State of California shall establish a retrofit program to ensure that on or before May 1, 1977, certain gasoline powered light duty vehicles of model years 1966 through 1974 subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section above are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for insuring that the provisions of paragraph (d) (3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of California shall require those light-duty vehicles of 1974 model year and earlier, which are able to operate on 91 RON gasoline, to be retrofitted with an oxidizing catalytic converter.

(4) Method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(d) After May 1, 1977, the State shall not register or allow to operate on its streets or highways any light duty vehicle which does not comply with the applicable

standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 1, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(f) The State of California shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if it fails to timely submit the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc. 73-13033 Filed 6-29-73; 8:45 am]

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[40 CFR Part 52]

ARIZONA

Approval and Promulgation of Implementation Plans

Background. In accordance with an order of the U.S. Court of Appeals for the District of Columbia Circuit, several States were required to submit transportation control plans on April 15, 1973. Most State plans submitted on April 15 relied on extensive use of common control measures such as inspection/maintenance and installation of retrofit emission control devices. As a result of EPA evaluation of the State plans, applicability, effectiveness, and minimum time required for complete implementation of the control strategies on a nationwide basis were established. After reviewing the Arizona plan in light of the data consolidated from the evaluation of all State plans, the Administrator concluded that the plan was partially approvable. Namely, the strategy for attainment of the national standard for photochemical oxidants was approved while the attainment of the carbon monoxide standards was not approved. The evaluation of the Arizona plan is available for inspection at U.S. Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111, and the U.S. Environmental Protection Agency, Freedom of Information Center, Room 329, 401 M Street SW., Washington, D.C. 20460.

Since the Administrator disapproved a portion of the Arizona transportation plan, the Administrator is required, under section 110(c) of the Act, to propose and subsequently promulgate regulations setting forth a substitute portion of such plan. Proposed regulations for the attainment and maintenance of the national standards for carbon monoxide are herewith proposed.

PUBLIC HEARINGS

The Administrator will hold public hearings on the proposed regulations in order to provide the general public ample opportunity to comment. Two hearings will be held in Arizona as follows: in Phoenix on August 6, 1973, at 9:30 a.m. in the Phoenix Civic Plaza Flagstaff Room, 225 East Adams Street, and in Tucson on August 8, 1973, at 9:30 a.m. in the Tucson Community Center Theater, 260 Church Street. Persons wishing to participate in the hearing are requested (but not required) to submit three copies of their statements at least five days prior to the date of the hearing to: Cassandra Dunn, Regional Counsel, U.S. Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111.

SUMMARY

Studies by the Agency indicate that a reduction on the order of 54 percent would be necessary in projected 1975 emissions of carbon monoxide in order to attain the national primary ambient air quality standards in the Phoenix-Tucson Intrastate Region. It should be noted that a reduction of 68 percent would have been necessary to attain the standards in 1971. The difference in the needed reductions is due to control measures on stationary sources submitted by the State and already approved, and reductions achieved through reduced automobile emissions resulting from the Federal Motor Vehicle Control Program. The Administrator will herewith propose control measures to show attainment, but the Administrator has concluded that an extension of the deadline for achieving the standards to 1977, under section 110(e) of the Act, is justified because the necessary technology or other alternatives are not available and will not be available soon enough to permit full compliance. In reaching this conclusion, the Administrator has considered and applied as part of the plan reasonably available alternative means for attaining the primary standards. The control measures proposed herein reflect what

EPA considers to be the most feasible approach for meeting the national standards in the Region. However, these measures are subject to change prior to promulgation as a result of written comments, testimony presented at the public hearings or further study by EPA.

The Administrator recognizes the commitment the State of Arizona has made to periodic vehicle inspection and retrofit of emission control devices for light-duty vehicles and commends the State's efforts and progress in their development. Even though the Administrator finds that the plan submitted by the State of Arizona does not provide sufficient emission reduction, these individual control measures are acceptable means for reducing vehicle emissions. Therefore, the Administrator is proposing these measures, in accordance with the schedule set forth in the State's plan, supplemented by additional controls. The additional controls include reasonable and apparently available means of reducing carbon monoxide. These means include bus/carpool lanes on freeways and major streets, reduction in off-street public parking, and limitations on the construction of additional parking facilities, supplemented by the required availability of computer-aided carpool and bus matching system. The intent of these measures is to reduce VMT (vehicle miles traveled) by discouraging individual use of private vehicles and encouraging use of carpools and existing transit systems, and to stimulate new and/or expanded transit systems. These control measures will be implemented prior to 1975. Less attractive and more severe measures are ultimately required to show attainment by 1977. These are also proposed and would be instituted in 1974 and fully implemented by May 31, 1977. These measures include a ceiling on further increases in gasoline consumption beyond 1973 levels accompanied by a limit on motocycle registration to the projected 1975 level. The primary guideline the Agency has used in proposing these control measures for VMT reduction is that sufficient alternative transportation capacity is presently or potentially available in the metropolitan area of the Phoenix-Tucson Region to achieve a 10-15 percent

VMT reduction by 1975 with an additional similar reduction by 1977.

The Agency also encourages close examination of such measures as replacement of on-street parking with bicycle lanes on major streets, fare reduction, provision of a jitney service and use of mini-buses, fringe parking lots for transfer to buses and carpools, special parking privileges for carpools, on-street parking prohibition for non-residents, State taxes to encourage VMT reduction or to raise revenue to benefit mass transit, and provision of bus tokens in place of free parking privileges.

The Administrator encourages the State to adopt and resubmit transportation control strategies identical or equivalent to the strategies proposed below together with an adequately documented justification for an extension of the attainment date for the carbon monoxide standards.

STATE AND LOCAL IMPLEMENTATION OF CONTROL MEASURES

In order to preserve the intent of the Clean Air Act whereby local pollution problems will be dealt with primarily at the local level, the Agency will require State and local governments to take action wherever possible, and will not involve the Federal government in the administration of local programs and in direct enforcement against individual citizens. Requirements of this sort are applicable to bus/carpool lanes, motorcycle control, public parking facilities, inspection/maintenance, retrofit, and gas limitations. Appropriate governments will also be required to submit compliance schedules for these programs, with complete details for their implementation.

If the State submits adequate control measures or substitute control measures which will achieve comparable reductions in pollution, then the Administrator can approve the State's measures rather than promulgate his own. However, the requirement to submit adequate compliance schedules and take other actions will be enforced on a timely basis if the Agency's measures are promul-

gated. Therefore, it is suggested that plans to comply with these measures not be delayed.

Revised Control Strategies

The State of Arizona is proceeding with a mandatory periodic vehicle inspection for light-duty vehicles which, if implemented as planned, will serve as an outstanding example of a loaded emission test for other States. In addition, the State has proposed to investigate mandatory inspections of motorcycles and heavy-duty vehicles. The proposal herein will require mandatory periodic vehicle inspection for light-duty vehicles only. EPA does not currently have information on the effectiveness or time required for implementation of an inspection program for heavy-duty vehicles and, therefore, cannot propose this control measure. Catalytic converters would be required in 1976-77 for many vehicles in the 1968 through 1974 model years. It is estimated that catalytic converters can only be retrofitted on 20 percent of the 1968-1970 vehicles and 75 percent of the 1971-1974 vehicles because of potential lubricity and octane problems associated with the use of 91 octane lead-free fuel. It cannot be concluded at present that the technology for retrofit converters has developed to the point that they could be installed effectively as retrofit devices in 1975. However, the Agency will monitor the status of development of this technology and accelerate the dates if feasible. This strategy was an acceptable control measure in the plan submitted by Arizona. Another retrofit control measure will be the requirement for retrofit of air bleed devices on many pre-1968 light-duty vehicles. This retrofit measure was also an acceptable control measure in the proposed Arizona plan.

The remainder of the strategies proposed are directed toward a 32 percent reduction in VMT by light-duty vehicles which would be accomplished by 1977. A 10-15 percent VMT reduction can be achieved by 1975 by increasing the occupancy factor for work-oriented trips by 50-75 percent. The present estimated occupancy factor is

1.2 persons per vehicle. The goal would be to raise this factor to between 1.8 and 2.1 persons per vehicle for work-oriented trips. (These estimates are based on the estimate that 40 percent of urban travel is work-oriented, as stated in the Maricopa Association of Government report, "Transit and the Phoenix Metropolitan Area.") This is proposed to be accomplished by bus/carpool lanes on freeways and major streets, reductions in off-street public parking, and limitations on the construction of additional parking facilities, supplemented by the required availability of computer-aided bus and carpool matching system. The measures proposed herein will require conversion of some motor vehicle lanes on all major streets and highways, and it is expected that a widespread network of bus/carpool lanes will provide substantial incentive to the use of buses and carpools while making private vehicle travel by single drivers relatively less attractive. Planning for specific motor vehicle lanes is expected to take place at the local level, under the overall requirements herein. Exceptions to or modifications of the broad requirements will be approved when specifically justified. Because sufficient numbers of buses are not presently available to carry the passengers currently using these lanes in private cars, these proposed regulations would reserve the use of these lanes for carpools with three or more persons in each vehicle.

To assist commuters who desire to form carpools, it is proposed to require the availability of a computer-aided bus/carpool matching system. Participation in this program would be voluntary. The system would provide each participant with a listing of names, home locations, and work phone numbers of all other participants whose working hours most nearly match theirs.

Publicly owned off-street parking facilities will be required to reduce their number of parking spaces in an effort to reduce the high number of low-occupancy private vehicles entering the central business districts and other congested areas, and to promote voluntary carpooling and the use of bus transit. Comment is invited on the possibility of extending this control to privately

owned parking facilities, either by outright reductions in spaces or by imposing regulatory fees. Another provision would limit further construction of new parking facilities in the metropolitan area.

It is estimated that the above control measures can achieve a 10-15 percent VMT reduction by 1975. To assure that this VMT is achieved and to achieve an additional 15 percent reduction between 1975 and 1977, it is proposed to limit further increases in gasoline consumption beyond 1972-1973 levels accompanied by a limit on motorcycle registration to the projected 1975 level. Initiation of the gasoline limitation in mid-1974 is expected to have relatively light impact until 1975 due to the reduced demand for gasoline consumption resulting from the aforementioned VMT reduction measures. Subsequent to 1975, the continuing growth in VMT within the Region will be retarded by limiting the continued growth in gasoline consumption. Gasoline consumption has been increasing approximately 6.6 percent per year. It is proposed that distributors not be permitted to deliver to retail outlets any more gasoline than is distributed during the base year of July 1, 1972-June 30, 1975. No requirements will be placed on the individual motorist. The gasoline limitation and motorcycle registration limitation would be eliminated when they are no longer required to maintain the carbon monoxide standards. It is expected that this will occur during the 1977-1980 time period.

In addition, an overall ceiling on the increase in numbers of motorcycles and scooters is proposed to prevent counter-productive shifts from automobiles to motorcycles as a result of gasoline limitation or parking bans. It should be noted that at the time the ceiling on motorcycle registrations would be implemented, motorcycle carbon monoxide emissions would be 14 to 20 times greater than the new 1976 automobile emissions on a grams-per-mile basis. Thus, any shift in usage from automobiles to motorcycles to counter gas limitations would result in a large increase in emissions. In an attempt to remove the ceiling on motorcycle registration, the Agency will evaluate the feasibility of establishing emission standards for new motorcycles and will evaluate the availability of

motorcycle emission control technology for meeting emission standards and for retrofit.

Compilation of Control Strategy Effects

Table I shows the relative importance of each control measure in 1977. Table II shows a compilation of control strategy effects. As can be seen, the national standards for carbon monoxide are attained by 1977.

TABLE I

	Percent
Percentage reduction needed for attainment in 1977	44.5
Amount attributed to control measures:	
Inspection/maintenance	8.0
Retrofit devices:	
Oxidizing catalytic converter	11.9
Air bleed	9.9
VMT reduction	9.7
Gasoline/motorcycle limitation	9.0
Percentage reduction attained	43.5

TABLE II

Source and Control Measures	Emissions and Reductions, tons/day		
	1975	1977	1980
Mobile Source Emissions without Proposed Control Measures	612.7	488.0	338.3
Expected Reductions: Inspection/ Maintenance		—48.0	—33.8
Retrofit Devices			
Oxidizing Catalytic Converter		—72.5	—45.8
Air Bleed		—60.8	—39.0
VMT Reduction Measures	—73.6	—59.6	—40.6
Gasoline Limitations *		—54.7	
Motorcycles	14.0	14.0	18.6
Heavy-duty Vehicles	69.9	80.3	98.6
Other (Stationary, Aircraft, etc.)	25.7	28.7	31.5
Total Emissions Remaining	648.4	314.6	327.8
Allowable Emissions for Attainment of CO Ctandards	333.1	333.1	333.1

* Gasoline limitation and motorcycle registration limitation are only required between 1974-1975 and 1977 to attain and maintain the CO standard.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Regional Administrator, EPA, 100 California Street, San Francisco, California 94111. All relevant comments received within 30 days of this date will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection at the Regional Office. Copies of the proposal will also be available for inspection at the following locations: Arizona Division of Air Pollution Control, 1740 W. Adams Street, Phoenix, Arizona, 85007, and the Pima County Air Pollution Control Division, 151 West Congress Street, Tucson, Arizona 85701. The final promulgation of regulations for the Phoenix-Tucson Intrastate Region will take place on August 15, 1973. This notice of proposed rule making is issued under the authority of section 110(c) and section 301(a) of the Clean Air Act.

(42 U.S.C. 1857c-5)

Dated: July 6, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter 1, Title 40, of the Code of Federal Regulations as follows:

Subpart D—Arizona

1. Subpart D is amended by adding §§ 52.136, 52.137, 52.138, 52.139, 52.140, 52.141, 52.142, 52.143, and 52.144 as follows:

§ 52.136 Gasoline limitations.

(a) Definitions:

(1) The term "base year" means the consecutive 12-month period commencing on July 1, 1972, and ending June 30, 1973.

(2) The term "distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) The term "retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This section is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region (hereafter referred to as the Region), to all distributors of gasoline to any retail outlet in this area and to the owners or operators of all retail outlets in this area.

(c) Beginning July 1, 1974, the State of Arizona shall implement regulations limiting the total gallonage delivered to retail outlets in the Region to the amount delivered to such outlets during the base year.

(d) In order for the State to determine the amount of gasoline delivered during the base year and years during which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the Region during the base year and years during which control is in effect. For each year during which control is in effect, the owner or operator of each retail outlet to which this section applies shall provide the State with a detailed accounting of gasoline received from each distributor, including the total amount of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports as it may deem necessary for the implementation of this section.

(e) The State of Arizona shall submit no later than October 1, 1973, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraphs (c) and (d) of this section, including:

(1) The text of needed statutory proposals and needed regulations which it will propose for adoption.

(2) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c) of this section is delivered to retail outlets in the Region. Such date shall be no later than March 30, 1974.

(3) A date by which any report necessary for establishing such procedures will be furnished to the State by the distributors. Such date shall be no later than January 1, 1974.

(4) Designation of an agency responsible for implementation and monitoring of this program.

(f) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.137 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control related maintenance and requiring that maintenance be performed.

(2) All other terms used in this section which are defined in Part 51, Appendix N of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the Phoenix-Tucson Intrastate Air Quality Region (hereafter referred to as the Region).

(c) The State of Arizona shall establish an inspection and maintenance program applicable to all light-duty

vehicles which operate on streets or highways over which it has ownership or control. No later than October 30, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than one year apart by means of a loaded test.

(2) Provisions for inspection failure criteria consistent with the emission reductions claimed in the plan for the strategy. These criteria shall include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Provisions for beginning the first inspection cycle by July 1, 1975, and completing it by July 1, 1976.

(6) Designation of any agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After July 1, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle which has not complied with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After July 1, 1976, no owner of a light-duty vehicle shall operate or allow the operation of such vehicle

which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(f) The State of Arizona shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposals and needed regulations which it will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation will be submitted.

(g) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.138 Bus/carpool lanes.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a motor vehicle lane on a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Major street or highway" means any street or highway which meets the criteria given in paragraphs (b) (4) (ii) or (iii) of this section.

(b) This regulation is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region (hereafter referred to as the Region).

(1) Each incorporated city within the Region shall establish bus/carpool lanes on the major streets and highways over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(2) Each county within the Region shall establish bus/carpool lanes on the major streets and highways within the Region over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(3) The State of Arizona shall establish bus/carpool lanes on the major streets and highways within the Region over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(4) Each of the governmental entities named in paragraph (b) of this section shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each major street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) If a major street or highway has four or more motor vehicle lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) at all times. If only one lane is open to buses (or buses and carpools) at all times, a second lane must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a major street or highway has three motor vehicle lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a major street or highway, or a motor vehicle lane or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not be accepted after September 1, 1973. Special circumstances justifying the need for an exemption or modification (such as inappropriateness of use by buses, designation of bicycle lanes instead, or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a motor vehicle lane or making a right turn) must be given in detail with the application.

(v) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Of the bus/carpool lane mileage for each of the governmental entities, 25 percent must be established and needed signs must be installed by March 1, 1974; 50 percent by June 1, 1974; 75 percent by September 1, 1974; and 100 percent by December 1, 1974.

(vi) Bus/carpool lanes must be prominently indicated by distinctive painted lines, pylons, or physical barriers.

(vii) A signed statement by the chief executive officer of each governmental entity or his designee shall identify the sources and amounts of funds for all projects.

(5) Buses shall have the right-of-way whenever changing lanes on major streets and highways with bus lanes. This shall take effect as each bus/carpool lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "No Left Turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraph (b) of this section shall convert existing on-street parking spaces to use as motor vehicle lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section, or unless the effect will be to create a bicycle lane in place of the parking spaces.

(c) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.139 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region (hereafter referred to as the Region).

(c) No person, after August 15, 1973 shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating

the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provides that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of § Part 51.4(b) of this chapter; and the Agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. If notice of intent to participate is required, that fact shall be noted prominently in the required notice of hearing.

§ 52.140 Limitation of public parking.

(a) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(b) Each governmental entity or public agency owning or operating an off-street parking facility located within the Phoenix-Tucson Intrastate Air Quality Control Region shall, by October 1, 1973, report to the Administrator the number of parking spaces in each such facility under its ownership or control. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(c) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (b) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of October 1, 1973, according to the following schedule:

By January 31, 1974—a reduction of 5 percent
By July 31, 1974—a reduction of 10 percent
By December 31, 1974—a reduction of 15 percent
By April 30, 1975—a reduction of 20 percent

(d) Each such owner or operator of an off-street parking facility subject to the requirements of paragraph (c)

of this section shall submit to the Administrator, no later than October 31, 1973, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(e) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.141 Motorcycle limitation program.

(a) Definitions:

(1) "Motorcycle" means any self-propelled two or three-wheeled motor vehicle capable of carrying one or more persons.

(2) "Registration" means the action of a State allowing a vehicle to be operated on the streets and highways in that State during a defined period of time.

(3) "Registration period" means that period of time for which a vehicle is allowed to be used within the State.

(b) This section is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region (hereafter referred to as the Region).

(c) As of January 1, 1975, or during any registration period which commences in the calendar year 1975, the State of Arizona shall not register in the Region more motorcycles than the total number of motorcycles projected for that period based on ordinary growth trends in

the period 1971-1974. This requirement shall remain in effect until July 1, 1977.

(d) After July 1, 1974, no person shall operate on the streets and highways of the State within the Region any motorcycle which is not validly registered by the State of Arizona or by another State.

(e) No later than October 1, 1973, the State shall submit a detailed compliance schedule showing the steps it will take to implement and enforce these requirements, and the text of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State will adopt procedures necessary to limit the number of motorcycles registered as required by paragraph (c) of this section.

(2) Proposed procedures to ensure that no motorcycle will be registered by the State in a county other than that of the owner's legal residence.

(3) A date by which such procedures will go into effect. Such date shall be no later than July 1, 1974.

(f) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not cotnain in satisfactory form each of the elements it is required to contain.

§ 52.142 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in Part 51, Appendix N of this chapter, are used herein with the meanings so defined.

(b) This section is applicable to the Phoenix-Tucson Intrastate Air Quality Control Region.

(c) The State of Arizona shall establish a retrofit program to ensure that on or before May 1, 1977, gasoline-powered light-duty vehicles of model years 1968 through 1974, subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section, are equipped with an appropriate oxidizing catalyst retrofit device. No later than October 30, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) A provision that starting no later than May 31, 1976, the State of Arizona shall require those light-duty vehicles of 1974 model year and earlier which are able to operate on 91 RON (research octane number) gasoline to be retrofitted with an oxidizing catalytic converter. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(d) After June 1, 1977, the State shall not register or allow to operate on its streets or highways any light-duty vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After June 1, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(f) The State of Arizona shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if its fails to timely submit the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.143 Air bleed to intake manifold retrofit.

(a) Definitions:

(1) The term "air bleed to intake manifold retrofit" as used in this section means a device in the intake system of the vehicle which enables the air/fuel ratio to be increased by metering additional air to the intake manifold in accordance with intake manifold vacuum advance to reduce emissions of hydrocarbons and carbon monoxide to the atmosphere.

(2) All other terms used in this section which are defined in Part 51, Appendix N of this section, are used herein with the meanings so defined.

(b) This section is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region.

(c) The State of Arizona shall establish a retrofit program to ensure that on or before June 30, 1976, all gasoline-powered light-duty vehicles of model years prior to 1968, subject under presently existing legal requirements to registration in the area defined in paragraph

(b) of this section, are equipped with an appropriate air bleed to intake manifold device. No later than March 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on vehicles subject to this section.

(2) Designation of any agency responsible for ensuring that the provisions of paragraph (c) (4) of this section are enforced.

(3) Provisions for beginning the installation of the air bleed devices by July 1, 1975, and installation of the devices on all vehicles subject to this section no later than June 30, 1976.

(4) A provision that starting no later than June 30, 1975, no vehicle of which retrofit is required under this section passes the annual emission tests provided for by § 52.137 unless it has been first equipped with an approved air bleed to intake manifold device which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Method and proposed procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and will have an adequate supply of retrofit components.

(d) After June 30, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After June 30, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(f) The State of Arizona shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit

program pursuant to paragraph (c) of this section, including the text of statutory proposals and regulations which the State proposes for adoption. The compliance schedules shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(g) Failure to comply with any provision of this section shall render each person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if it fails to timely submit the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.144 Bus/carpool computer matching system.

(a) Definitions:

(1) "Bus/carpool matching" means assembling lists of commuters sharing similar travel needs. The number of commuters on each list identifies potential bus/carpools.

(2) "Time-origin-destination (TOD) information" means information that identifies a commuter's work schedule, home and work location.

(3) All other terms used in this section which are defined in Part 51, Appendix N, of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the Phoenix-Tucson Intrastate Air Quality Control Region (hereafter referred to as the Region).

(c) Beginning March 1, 1974, the State of Arizona shall establish a computer-aided bus/carpool matching system which is conveniently available to all employees in businesses having more than 10 employees within the Region who operate light-duty vehicles on streets or highways over which it has ownership or control. No later than December 1, 1973, the State shall submit le-

gally adopted regulations to EPA establishing such a system. The regulations shall include:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each affected employee receiving an application form with a cover letter describing the matching program.

(ii) Provisions on each application for applicant identification of time, origin, and destination, and the applicant's desire to drive only, [illegible]e only, or share driving.

(2) A computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and semi-rural region surrounding the Phoenix and Tucson metropolitan areas and matching applicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service such that the master list of all applicants is retained and available for use by new applicants; applications are currently available; and the master list is periodically updated to remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating, overseeing and maintaining the bus/carpool computer matching system.

(d) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act.

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[40 CFR Part 52]

CALIFORNIA

Approval and Promulgation of Implementation Plans

This notice of proposed rulemaking sets forth transportation control plans for the following California Intrastate Regions (hereafter referred to also as Regions): San Francisco Bay Area, Sacramento Valley, San Diego, San Joaquin Valley, and Southeast Desert. A Federally proposed plan for the Los Angeles Intrastate Region was announced on January 15, 1973, and a revision of that plan was announced on June 15, 1973.

Background

On May 31, 1972, the State of California was granted, pursuant to section 110(e) of the Act, an extension of 2 years for the attainment of the national standards for photochemical oxidants (hydrocarbons) in the San Francisco Bay Area, Sacramento Valley, and Southeast Desert Intrastate regions and for carbon monoxide in the Sacramento Valley intrastate Region.

In accordance with the court decision on the NRDC v. EPA suit, this extension was rescinded and California was directed to submit a transportation strategy by April 15, 1973, that would provide for the attainment and maintenance of the standards as noted above by May 31, 1975. The court required each of the states that had originally been given an extension of time for submitting transportation control plans to submit such a plan by April 15, 1973, for each region that required it, and required the Administrator to approve or disapprove such plans by June 15, 1973. The court also ordered each of the 2-year extensions that had been granted for achieving the standards for automobile-related pollutants in these regions to be rescinded, with the proviso that they

could be granted again if, on reexamination, EPA concluded that each of the statutory tests had been met.

In addition, California was directed to submit a transportation strategy for photochemical oxidants (hydrocarbon) in the San Diego and San Joaquin Valley Intrastate Regions and for carbon monoxide in the San Francisco Bay Area, San Diego, and San Joaquin Valley Intrastate Regions. The Administrator disapproved those portions of the California plan that were required to be submitted. That disapproval was announced on June 15, 1973, and published in the FEDERAL REGISTER on June 22, 1973. The disapproval was based solely upon the lack of timely submittal of California's plan. The Environmental Protection Agency, will, when the plan is received, acknowledge its receipt in the FEDERAL REGISTER and will provide opportunity for the public to comment on the plan. After evaluation of the plan that is to be submitted by the State and consideration of all comments, this notice of proposed rule making will be revised accordingly. A transportation control plan will be promulgated by the Administrator if the State fails to submit its own plan. Upon submission of an acceptable plan by the State, the EPA plan, or portions thereof, will be rescinded.

SUMMARY

Studies available to the Administrator at present indicate that a significant reduction of reactive hydrocarbons will have to occur in all regions covered by this proposal if the ambient air quality standards for photochemical oxidants are to be attained. In all cases, the controls proposed will affect the required reduction in reactive hydrocarbons; attainment of the oxidant standards will ensure attainment of the carbon monoxide and nitrogen oxide standards as well.

The proposed control measures reflect what EPA considers to be the most feasible approach for meeting the national standards in each region. However, these measures are subject to change prior to promulgation as a result of written comments, testimony presented at the public hearings, or further study conducted by EPA.

Much of the reduction in photochemical oxidant levels will result from measures submitted by the State and already approved, but these measures are not enough to meet the standards. The Administrator has concluded that an extension of the deadline for achieving the standards to 1977 under section 110(e) of the Act is justified because the necessary technology or other alternatives are not available and will not be available soon enough to permit full compliance. The extension applies to all Regions covered by this proposal for photochemical oxidants and for carbon monoxide. In reaching this conclusion, the Agency has considered, and applied as part of its plan, reasonably available alternative means of attaining the primary standard.

The plan set forth herein provides for the application of the requirements to all emission sources other than motor vehicles not later than May 31, 1975, as required by section 110(e)(2)(A), and provides for the application of reasonable interim measures for control of motor vehicle emissions prior to 1977.

Most of the plan utilizes reasonable and apparently available means of reducing photochemical oxidants, carbon monoxide, and nitrogen dioxide, including requirements for establishing bus and car-pool lanes on freeways and major streets. Other measures, to be required prior to 1975 in most cases, include: reductions in off-street public parking; limits on the construction of additional parking facilities; limitations on motorcycles; mandatory inspection and maintenance of light-duty vehicles; and the prevention of further increases in gasoline consumption.

Portions of the plan utilize measures which appear reasonable but do not appear to be applicable by 1975 because of technical problems related to devices such as catalytic retrofits. These measures will be required beginning in 1976, with full implementation to be achieved by 1977; they will be required earlier if they become available. Even if all the reasonable measures mentioned above are imposed, it is possible that the national standards for photochemical oxidants will not be met in the

Regions by 1977 except in the San Joaquin Valley. Under the Clean Air Act, the Agency has no choice but to include in the plan a measure which can achieve the standards by 1977 even if it appears impractical and unworkable. Consequently gasoline limitations of whatever degree necessary have been included for 1977. If implemented, these limitations would achieve the standards for photochemical oxidants; however, the Agency will utilize every means available to avoid imposing impractical measures in order to meet the standards by 1977. It should be noted that grounds for a 1-year extension of the compliance date for certain sources under section 110(f) of the Clean Air Act may arise so that certain requirements of this plan may not be imposed until May 31, 1978.

Need for Mass Transit

The development of large-scale mass transit facilities in each Region is essential to any effort to reduce automotive pollution. The planning, acquisition, and operation of mass transit systems is and should remain a local responsibility. However, the automobile problem does not follow the boundaries of counties or cities. Current planning and operating agencies for mass transit do not appear to have sufficient authority to provide for adequate public transit with the notable exception of the San Francisco Bay Area's Metropolitan Transportation Commission. Consequently, the Environmental Protection Agency strongly endorses the concept of a region-wide transportation planning and operating authority.

The Agency also actively encourages the immediate large-scale purchase of additional public transportation facilities, specifically, additional buses, and encourages further examination of the feasibility of rail transit. To create conditions conducive to rapid bus transit, several of the measures in this plan give preferential treatment to buses. The Agency also encourages close examination of such measures as fare reductions; provision of jitney service; provision of more minibuses; fringe parking lots for buses and car pools; special parking privileges for

car pools; on-street parking prohibition for nonresidents; State taxes to encourage reductions in vehicle miles of travel (VMT) while raising revenue to benefit mass transit; provisions for establishment of additional bicycle lanes throughout the metropolitan areas such as this proposal sets forth; and provisions for free bus tokens in place of free parking privileges.

State and Local Implementation of Control Measures

In order to preserve the intent of the Clean Air Act that pollution problems be dealt with primarily at the local level, the Agency will require State and local governments to take action wherever possible, and will not involve the Federal Government in the administration of local programs or in direct enforcement against individual citizens. Requirements of this sort are proposed with regard to expansion of a State motor vehicle retrofit program and establishment of bicycle lanes, bus/car-pool lanes, motorcycle control, public parking facilities, inspection/maintenance programs and gas limitations. Appropriate governmental entities will be required to submit compliance schedules for these programs with complete details on their implementation.

If the State submits adequate control measures in any of these areas or substitute control measures which will achieve comparable reductions in pollution, then the Administrator can approve the State's measures rather than promulgating his own. However, the requirements to submit adequate compliance schedules and take other actions will be enforced on a timely basis if the Agency's measures are promulgated. Therefore, it is suggested that plans to comply with these measures not be delayed.

Proposed Mobile Source Controls

MODERATE VMT REDUCTIONS

EPA is proposing moderate VMT reduction measures in several regions to facilitate achievement of the standards.

The information available is incomplete. It is as true today as it was a year ago that, "states have had practically no experience with transportation control measures as a means of dealing with air quality problems." Nobody really knows what the public response to significant measures to reduce VMT will be. The studies that have been made on this point are inadequate and necessarily hypothetical until the measures have actually been put into effect. In addition, public attitudes in major urban areas appear to be changing and becoming less favorable to the continued use of automobiles on the present scale. Finally, even the question of the ability of different modes of transportation to accommodate the passengers diverted from automobiles as a result of significant VMT reductions will vary greatly with the individual region. No firm projection of what alternative transportation is available can be made without a detailed traffic study of each individual region, and, for the most part, such studies have not been made.

It is clear, however, that the authors of the Clean Air Act Amendments of 1970 anticipated that substantial VMT reductions might be necessary to achieve the standards. The Senate Report on the Act states that until the vehicle population is largely made up of cars that meet the 1975-76 standards, "as much as seventy-five percent of the traffic may have to be restricted in certain large metropolitan areas if health standards are to be achieved within the time required by this bill." It is also clear from the January 31, 1973, court of appeals opinion that if VMT reduction measures are "reasonably available" by 1975, and if the standards cannot be achieved without them, they must be put into effect. Consequently, it is proposed that the continuing growth in VMT within the air quality control regions covered by this proposal be stopped by limiting the continued growth in gasoline consumption. Gasoline consumption has been increasing by approximately 4.5 percent per year throughout the State of California. It is proposed that distributors not be permitted to deliver to retail outlets any more gasoline than is distributed during the period of July 1972 through

June 1973. No rationing requirement will be placed on individual motorists unless the State of California chooses to do so.

Against this background, EPA has reexamined the question of VMT reduction and has arrived at some conclusions which have influenced the actions being taken. Comment on these is invited, both generally and with respect to specific regions. No significant reduction in the use of private automobiles can be expected to result from measures to increase the attractiveness of other means of transportation, such as buying more buses and improving bus service, building bicycle paths, and, in the long run, building new rail rapid transit systems. Reductions in VMT can only be assured through the use of some form of restraint on or disincentives to vehicle use.

A measure cannot be considered "reasonably available," however, if implementing it would cause severe economic and social disruption. Although some reduction in personal travel could certainly be absorbed without this result, to achieve a significant VMT reduction it will be necessary for the bulk of the travel displaced from single-passenger automobiles to be absorbed by such other modes of transportation as car pools, walking, bicycling, or public transit.

The only significant expansion of public transit facilities that can be accomplished by 1975 is the upgrading and physical expansion of bus services. Much, however, can be done in this regard. Scheduling and service can be improved and optimized. Individual lanes of freeways and other major roads can be set aside for the exclusive use of buses and/or car pools. Significant numbers of new buses can be purchased and put into service by 1975. According to Department of Transportation figures, 2,500 transit buses were sold in this country in 1972, but the transit industry's production capacity is estimated to be more than 6,000 buses a year by 1975. Financial assistance from the Department of Transportation will be available to most communities for improving public transit facilities.

In the California Regions, sufficient alternative transportation capacity is presently or potentially available by

1975 to make reasonable VMT reductions (on the order of 10 to 15 percent) available by 1975. In part, this capacity is contained in present mass transit facilities, or can be created through the expansion of bus service as outlined above. It is also a possibility that many short trips now made by car could be made by bicycle or walking. Car pooling, however, may be the only strategy for reducing VMT which is both implementable by 1975 and capable of substantially reducing emissions without restricting personal mobility. Private automobiles, which are designed to carry four to six persons, carry an average of one and one-half persons per trip in major urban areas, and thus represent the largest unused pool of transportation capacity currently available.

EPA cannot directly require the use of car pools. It can be expected, however, that as measures to make the use of private automobiles less convenient are imposed, increased reliance on car pools will develop naturally as a matter of private initiative. It is proposed herein that the State provide a bus- and car-pool computer matching system to assist employees in establishing bus and car pools.

The measure proposed herein will require conversion of some lanes on major streets and highways for the exclusive use of buses and car pools, and it is expected that such a widespread network of bus/car-pool lanes will provide substantial incentive for use of buses and car pools while making private vehicle travel by single drivers relatively less attractive. Identification of specific lanes is expected to be made at the local level under the overall requirements herein. Exceptions to or modifications of the broad requirements will be approved when specifically justified since it will take some time before sufficient buses are available to carry the passengers currently traveling these lanes in private cars. These proposed regulations would permit the use of the lanes by car pools with three or more persons in the vehicle.

Due to the very high pollution potential of the 2-stroke motorcycles, the regulations herein proposed essentially ban the use of such vehicles during daylight hours in the

summer smog season. The average 2-stroke motorcycle emits approximately 31 times as much exhaust hydrocarbons per mile as will a new California 1975 automobile. Consequently, prevention of increases in the number of motorcycles is proposed to prevent counter-productive shifts from automobiles to motorcycles as a result of other elements of the control strategy. The Agency will evaluate the feasibility of establishing emission standards for new motorcycles and will evaluate the availability of motorcycle emission control technology, including retrofits, for meeting emission standards.

Governmental entities will be required to reduce the number of parking spaces in publicly owned off-street parking facilities in an effort to reduce the number of low-occupancy private vehicles entering the central business districts and other congested areas and to promote voluntary car-pooling and the use of bus transit. Comment is invited on the possibility of extending this control to privately owned parking facilities, either by outright reduction in spaces or by imposing regulatory fees.

INSPECTION AND MAINTENANCE PROGRAMS

Considerable reductions in motor vehicle emissions can be achieved by requiring all vehicles in an area to be tested annually for emissions, by failing those emitting pollutants that exceed a certain level, and by requiring maintenance on those which fail in order to bring them into compliance. This process is called "inspection and maintenance" throughout this proposal.

Three different types of tests are possible. The car can be tested while running in gear on a treadmill-like device called a "dynamometer" (a "loaded test"); it can be tested while running in neutral (an "idle test"); or certain emission-related engine components can simply be examined to make sure they are in good working order ("parameter" inspection). A loaded test is the most effective and most expensive; parameter inspection is the least effective and least expensive. Since an inspection and maintenance program cannot be expected to achieve

maximum effectiveness in reducing emissions unless a loaded test is adopted, EPA is proposing its adoption.

The State of California is proceeding with a loaded mode inspection system which will result in emission reductions. The proposal herein will require that this inspection system be expanded to require mandatory inspection and maintenance of all light-duty motor vehicles in Regions covered by this proposal. The inspection and maintenance program which the State is currently evaluating and proposing will be applicable to the Los Angeles Intrastate Region only.

RETROFITS

Until recently, much of the discussion of transportation control strategies centered on whether it was feasible to require the installation ("retrofit") of additional pollution control devices on motor vehicles currently in use. The most controversial of these devices has been the catalytic converter.

In his decision of April 11, 1973, to suspend the 1975 automobile emission standards for 1 year, the Administrator concluded that the problems involved in attempting to scale-up production of catalytic converters for new cars from near zero to 10 million units in a single model year, combined with the problem of adapting assembly lines to do this work, would probably result in economic dislocation if catalytic retrofits were required. The problems that would be encountered in any attempt to retrofit large numbers of existing vehicles with catalytic mufflers by mid-1975 are far more formidable than those generated by the attempt to put them on new cars.

Far less developmental work has been done on catalytic retrofits than on catalysts for new cars. The construction of production facilities for new-car catalysts has been largely funded by the major auto companies under requirements contracts; no such support has been available where retrofits are concerned. Finally, and most important of all, new-car catalysts would be installed by a few major companies through addition of another process to their assembly lines. To retrofit large numbers of in-use

cars, it would be necessary to get them off the road into many different repair shops and to train a considerable number of mechanics how to install the catalysts once the cars had been made ready to receive them. In light of these difficulties, it is unrealistic to expect that significant progress toward the catalytic retrofit of large numbers of cars can be made by May 31, 1975. Accordingly, EPA is not proposing the retrofit of any vehicles with catalytic mufflers prior to 1975.

Cars with catalysts must be run on lead-free gasoline if the catalyst is to retain its efficiency. Current EPA regulations set forth on January 10, 1973 (38 FR 1254), provide for such gasoline to be made generally available by the beginning of the 1975 model year, but only in a relatively low octane. It is not anticipated that higher octane gasoline with the extremely low lead levels that catalysts require will be generally available by 1977 even if EPA decides that lead in gasoline is a health hazard and should be phased out. Accordingly, it will only be feasible to retrofit catalysts on certain model year cars, since only these models have been designed to run on low-octane gasoline. Catalytic converters would be required in 1976-1977 for many pre-1975 vehicles. It cannot be concluded at present that the technology for retrofit converters has developed to the point that they could be installed effectively by 1975. However, the Agency will monitor the status of development of this technology and will accelerate the date if feasible.

It is proposed that the California nitrogen oxide reduction device program for used cars be expanded. This device consists of a vacuum spark advance disconnect and/or an exhaust gas recirculation system.

This regulation requires application of the State's present program for 1955-1965 model year vehicles to the Sacramento and San Joaquin Regions. The current State program exempts these regions from this retrofit program.

STATIONARY SOURCE CONTROLS

Even though in most of the regions covered by this proposal the automobile is by far the major source of

hydrocarbon and carbon monoxide emissions, substantial amounts are also emitted by both major and minor stationary sources. Major sources include oil and gasoline storage facilities and refineries; minor sources, which may be important factors in air pollution because of their numbers, include dry-cleaning shops, gas stations, incinerators, and any place where solvent-based paints are used.

EPA looked first to the reductions that might be achieved by further control of stationary sources for a variety of reasons. The nature of the contro's available. their cost, and their effectiveness are relatively well known, and both States and EPA have had significant experience in enforcing similar measures. It can be predicted with confidence that none of these measures will cause any noticeable economic or social disruption. Since almost without exception they will be limited to requiring commercial enterprises to make investments or changes in their modes of operation. the only effect is likely to be some rise in the price of the goods or services produced by the affected enterprises.

Regulations are herein proposed to further limit emissions from stationary sources. They include requiring installation of vapor recovery systems at gasoline stations (the San Francisco Bay Area and San Diego Regions already have such a regulation and therefore no such proposal is made for these areas); additional control of dry-cleaning emissions; elimination of certain industrial solvent compounds; improved control on painting operation solvent loss; and additional restrictions on the loss of organic solvents in general industrial use. The Federal regulations dealing with the development by the State of a "complex source" review procedure were promulgated June 11, 1973, by the Environmental Protection Agency. These regulations provide guidelines on the procedure by which the State must review the construction permits of such indirect emission sources as shopping centers, housing complexes, and sports arenas, which in themselves are not major sources of pollution but tend to increase the amount of vehicle traffic in areas

where they are located, and therefore cause an increase in motor vehicle related emissions. The review procedure developed by the State must be submitted to the Environmental Protection Agency by August 15, 1973, for approval. This point source review currently being done by some local districts and the Environmental Protection Agency should further reduce growth-induced emissions.

Control Strategy for the San Francisco Bay Intrastate Air Quality Control Region

The San Francisco Bay Intrastate Region is comprised of all of seven counties, namely Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Napa, and portions of two others, southwestern Solano and southern Sonoma. Geographically, the region covers approximately 5,600 square miles and has within its bounds approximately 4.6 million people and 2.7 million motor vehicles. Air Pollution control in the region falls under the jurisdiction of the Bay Area Air Pollution Control District created by the California Legislature in 1955. During 1971, the Region experienced numerous violations of both Federal and State air quality standards. Based upon a linear rollback model and a maximum 1-hour oxidant reading at San Leandro of 0.36 ppm, a 78 percent reduction in reactive hydrocarbon emissions is required a [sic] achieve the ambient air quality standards for photochemical oxidants. Of the total emissions in the Region, 58 percent of the hydrocarbons, 70 percent of the nitrogen oxides, and 96 percent of the carbon monoxide emissions come from mobile sources. Although mobile sources presently account for the majority of the emissions, their control alone will not be sufficient to allow for attainment of national ambient air quality standards. Table I below shows the impact the proposed measures will have on the total emissions in the Region.

TABLE I—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SAN FRANCISCO BAY REGION IN 1977

Source of pollutant and control measures	*Emissions and reductions, tons/day of reactive hydrocarbons*
Stationary source emissions without control strategy	225
Expected reductions	
1. Gasoline marketing vapor recovery	—138
2. Surface coating improvements	—23
3. Dry-cleaning controls	—4
4. Degreasing controls	—10
Stationary source emissions remaining	50
Mobile source emissions without proposed control strategy	201
Expected reductions	
1. Light-duty motor vehicle inspection and maintenance and catalytic converter retrofit	—38
2. Motorcycle controls	—17
3. Reduction in private automobile use (20%)	—17
Mobile emissions remaining	129
Gasoline reduction (additional 64% VMT reduction)	—54
Total emissions remaining	125
Allowable emissions to attain standards	125

Studies available to EPA indicate that a VMT reduction on the order of 20 percent can be achieved by means other than gas rationing. The remainder of the VMT reduction needed will be achieved through gas rationing.

It is hoped that in the process of developing a regional transportation plan, the Metropolitan Transportation Commission will be able to determine the effect of their plan upon the air quality generally, and specifically, upon the miles traveled by automobiles.

Southeast Desert Intrastate Air Quality Control Region Control Strategy

The Southeast Desert Intrastate Region, also known as the Southeast Desert Air Basin, is located in the southeast portion of the State of California. It is comprised of all of Imperial County and the eastern portions of San Bernardino, Riverside, Kern, Los Angeles, and San Diego Counties. Geographically, this Region covers 33,600 square miles and is separated from the coastal regions by a series of mountain ranges. Elevations vary from 235 feet below sea level to 11,000 feet above sea level.

Air quality monitoring stations in the Region, in particular, those in the Coachella Valley, record photochemical oxidant levels up to five times the national ambient air quality standards. The overall 1971 maximum readings in the Region are 0.38 part per million oxidants (recorded in Palm Springs) and 17 parts per million carbon monoxide (recorded in Indio). Using simple rollback and assuming a linear relationship between reactive hydrocarbons and oxidant concentrations, the reductions required to achieve the national standards are 70 percent of the reactive hydrocarbons and 47 percent of the carbon monoxide.

There are significant data which support the hypothesis that air pollution from the Metropolitan Los Angeles Intrastate Region is transported to and contributes substantially to high oxidant levels in the desert areas east of Los Angeles. It is expected that the emission controls proposed by the Administrator, in addition to State and local emission controls for the Metropolitan Los Angeles Region will provide for attainment of the carbon monoxide and photochemical oxidant standards in the Southeast Desert Region by July 1977. Any delay experienced in attaining the oxidant and carbon monoxide standards in the Los Angeles Region will cause a corresponding delay in the attainment of the standards in the Southeast Desert Region.

A discussion of studies relating the air quality in the Southeast Desert Region to that in the Los Angeles Re-

gion can be found in "Development of Emission Control Strategies for Reducing the Air Pollution in Critical California Air Quality Control Regions," prepared under contract for the Environmental Protection Agency and available from the EPA Region IX office at 100 California Street, San Francisco, California 94111.

Because of the dependence of air quality in the Southeast Desert Region upon that in the Los Angeles Region, and because of the very small impact that emissions in the Southeast Desert Region have upon air quality there, no transportation controls are proposed for this Region.

Transportation Control Strategy for Sacramento Valley Intrastate Air Quality Control Region

The Sacramento Valley Intrastate Region, also known as the Sacramento Valley Air Basin, lies in the center of Northern California, bounded on the west by the Coast Range, on the north and east by the Cascade Range and the Sierra-Nevada Range, and on the south by the San Joaquin Valley. This Region is comprised of portions of 15 counties. Geographically, the Region consists of 21,300 square miles, 1.2 million people, and 840,000 motor vehicles. Air pollution control in the Region falls under the jurisdiction of the local air pollution control districts.

TABLE II—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SACRAMENTO "REGIONAL AREA" IN 1977

Source of pollutant and control measures	*[Emissions and reductions, tons/day of reactive hydrocarbons]*
[Statutory source emission without] control strategy	40.6
Expected reductions	
1. Gasoline marketing vapor recovery	—26.0
2. Surface coating improvements	—1.1
3. Dry-cleaning controls	—0.7
4. Degreasing controls	—1.9
5. State limitations on burning	2.1
Stationary emissions remaining	8.8

Mobile source emissions without proposed control strategy	54.1
Expected reductions	
1. Catalyst retrofit	—5.2
2. Inspection/maintenance program	—4.1
3. Motorcycle controls	—5.9
4. Reduction in private auto use (20%)	—5.2
5. Vacuum spark advance program	—1.0
Mobile emissions remaining	32.7
Gasoline reduction (additional 29% VMT reduction)	—7.5
Total emissions remaining	34.0
Allowable emissions to attain standards for photochemical oxidants	34.5

As in the rest of the State, the local and regional organizations deal primarily with stationary source controls, leaving mobile source controls to the California Air Resources Board.

During the period 1970 to 1972, the Sacramento Valley Region experienced numerous violations of both Federal and State air quality standards. Photochemical oxidants are the predominant problem, and it appears from the limited data evaluated that the problem has increased in recent years, both in number of violations which occur and the maximum oxidant level experienced. Based on a 1-hour maximum oxidant reading during 1971 in Sacramento of 0.24 ppm and using a proportional rollback model, a 67 percent reduction in reactive hydrocarbons would be required to meet the national ambient air quality standards for oxidants. The annual arithmetic means for NO_x from 1963 to 1971 show that the NO_x standard has never been exceeded within the given time period. In Sacramento Countly, mobile sources account for 71 percent of the hydrocarbon, 89 percent of the nitrogen oxides and 88 percent of the carbon monoxide. Since the air quality levels are most severe for Sacramento County, it appears appropriate to attempt to solve the airshed problem by developing a control strategy specifically for Sacramento County and its immediate vicinity. In the Sacramento Valley and San Joaquin Valley Regions, vast areas are sparsely populated but others are

highly urbanized and have high emission densities in comparison with the rural areas.

The Agency has therefore determined that it is appropriate to reduce emissions from the urbanized areas which experience the high pollution levels. The Sacramento Region has been redefined to include only the 6 counties in the immediate vicinity of the City of Sacramento in an area which roughly approximates the Sacramento Regional Area Planning Commission. The following table summarizes the effects of the proposed control strategies. On the basis of very limited current ininformation, no more than 20 percent VMT reduction could be expected to occur under the proposed VMT reduction measures. The remainder of the VMT reduction needed will be achieved through gasoline rationing.

Transportation Control Strategy for San Joaquin Valley Intrastate Air Quality Control Region

The San Joaquin Valley Intrastate Region, also known as the San Joaquin Air Basin, consists of all of the Counties of Amador, Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tulare, and Tuolumne, and the western portion of Kern County. This Region lies in the southern portion of the Great Valley and extends into the neighboring mountain slopes. It is bounded on the west by the Coastal Range, on the east and south by the Sierra-Nevada and Tehachapi Mountains, respectively, and on the north by the Sacramento Valley Intrastate Region. The Region includes 30,200 square miles of land area and had a population of over 1.6 million people in 1970, which is a 16 percent increase since 1960. Although it contains 19 percent of the State's land area, the Region has only 8 percent of the State's population. National ambient air quality standards have been exceeded in seven cities in the San Joaquin Valley Region: Stockton, Fresno, Bakersfield, Modesto, Visalia, Parlier, and Five Point. Each of the areas surrounding the cities have unique characteristics with regard to air quality, meteorology, stationary sources, population distribution, and transportation. The transportation control strategy proposed herein recognizes this fact. A thorough analysis was made of Kern County (Bakersfield), Fresno County (Fresno), and San Joaquin County (Stockton). Insufficient data exist for an adequate analysis of Parlier and Five Point (both in Fresno County), but it is expected that the proposed transportation controls as applied to Fresno will be adequate for attainment of the national ambient air quality standards for photochemical oxidants in these two other cities as well.

The table below presents the maximum photochemical oxidant readings in the five counties of concern:

County	*Maximum oxidant concentration, ppm*
San Joaquin (Stockton)	0.20
Kern (Bakersfield)	0.22
Fresno (Fresno)	0.21
Tulare (Visaila)	0.19
Stanislaus (Modesto)	0.24

Reductions in emissions of reactive hydrocarbons of up to 65 percent (for Modesto) will be required in these counties by 1977 in order for the air quality standards to be met.

The table below shows the approximate effect that the proposed control strategies will have in Kern County.

TABLE III. SUMMARY OF IMPACT OF CONTROL STRATEGIES IN THE KERN COUNTY PORTION OF THE SAN JOAQUIN VALLEY REGION IN 1977

Source and control measures	*Emissions and reductions of reactive hydrocarbons, tons/days*
Stationary source emission without proposed control strategy	11.3
Expected Reductions	
1. Vapor recovery at gasoline stations	—5.8
2. Surface coating restrictions, dry-cleaning controls, and degreasing controls	—0.7
Stationary source emissions remaining	4.8
Mobile source emissions without the proposed control strategy	21.4
Expected reductions	
1. Catalyst retrofit, expansion of State NO_x program, and mandatory inspection and maintenance	—4.2
2. Motorcycle limitations	—2.5
3. Reduction in auto usage (23%)	—2.4
Mobile emissions remaining	12.3
Total emissions remaining	17.1
Allowable emissions for attainment of standards for photochemical oxidants	17.2

As can be seen from the table for Kern County, a 23 percent VMT reduction is necessary by 1977 for attainment of the standards. In Stanislaus County, a similar situation exists, with a corresponding need for VMT reduction. In Fresno County, present studies indicate that a 16 percent VMT reduction by 1975 would provide for attainment of the standards, with a zero VMT reduction necessary for 1977. In San Joaquin County, a 32 percent VMT reduction is necessary in 1975 for attainment of the standards, but only 8 percent in 1977.

Transportation Control Strategy for San Diego Intrastate Air Quality Control Region

The San Diego Intrastate Region, also known as the San Diego Air Basin, is located in the southwest corner

of the State and consists of the western two-thirds of San Diego County. It is bounded on the east by the summit of the Peninsular Range, on the north by Orange County, on the south and west by Mexico and the Pacific Ocean, respectively. The airshed has a land area of approximately 3,040 square miles, and, as of 1970, a population of some 1.24 million people. It is estimated that the motor vehicle population in 1972 was approximately 715,000. The Region's population is concentrated primarily in the City of San Diego and in the incorporated areas along the coast. The mountainous terrain and frequent inversions hold in pollutants, and the southern California climate provides ample sunshine to aid in the formation of photochemical oxidants. The automobile is presently the dominant mode of transportation, and accounts for the majority of the hydrocarbon and carbon monoxide emissions. Air pollution control in the Region is the local responsibility of the San Diego County Air Pollution Control District. Since the airshed is contained within one county, no additional regional coordinating council is required for stationary source controls. As in the rest of the State, mobile source emission controls are the responsibility of the California Air Resources Board.

The national ambient air quality standards for photochemical oxidants and carbon monoxide have been exceeded in the Region. In 1970, the maximum 1-hour oxidant reading recorded in the Region was 0.40 ppm at the Oceanside station. The use of this oxidant reading for air planning purposes was rejected on the basis that the reading was the result of a unique traffic stoppage caused by highway construction, combined with unusually heavy volume that day. In addition, there is some evidence of pollutant transport into the Region from the Los Angeles Region. The next highest 1-hour oxidant reading that occurred in the Region was 0.32 ppm at the Escondido Station in 1972, and this reading is being used for oxidant air planning purposes. A high 8-hour carbon monoxide reading of 18 ppm recorded in 1972 is being used for carbon monoxide air planning purposes. As in many areas of California, the predominant air

pollution problem is photochemical oxidants. a [sic] review of air quality data for 1970-1972 shows that both oxidant and carbon monoxide standards were frequently exceeded. Both the frequency of violations and the maximum levels of oxidant experienced indicate the need for extensive mobile and stationary source control if the national air quality standards are to be achieved. The oxidant problem is the main obstacle to attainment of the standards.

Recent EPA analysis indicates that emissions must be lowered to the following levels to meet the photochemical oxidant and 8-hour carbon monoxide standards: the reactive hydrocarbon emissions must be lowered to 25 percent of 1972 emission levels in order to meet the oxidant standard, and the carbon monoxide emissions must be lowered to 50 percent of the 1972 emission levels in order to meet the carbon monoxide standard, using proportional rollback.

The majority of the carbon monoxide and reactive hydrocarbon emissions in the Region are attributable to motor vehicles. Information available indicates that, in addition to stringent controls for stationary sources and requirements for limiting the emissions of motor vehicles, a reduction in VMT by gasoline-powered motor vehicles of 45 percent will have to be effected in order to meet the oxidant standard in 1977. It should be pointed out that it is estimated by EPA that one of the proposed technical strategies, catalyst retrofit, cannot be implemented before 1977.

Table IV shows the impact the proposed measures will have on total emissions in the San Diego Region.

TABLE IV—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN THE SAN DIEGO REGION IN 1977

Source and control measures	*Emissions and reductions of reactive hydrocarbons, tons/day*
Stationary source emissions without proposed control strategy	52.5
Expected reductions	
1. Vapor recovery at gasoline stations	—31.9
2. Surface coating restrictions, dry-cleaning controls, and degreasing controls	—15.8
Stationary emissions remaining	4.8
Mobile source emissions without proposed control strategy	86.4
Expected reductions	
1. Catalyst retrofit, and mandatory inspection and maintenance	—14.5
2. Motorcycle limitations	—5.8
3. Reduction in VMT (20%)	—8.9
Mobile emissions remaining	57.2
Gasoline reduction (additional 25% reduction)	—11.0
Total emissions remaining	51.0
Allowable emissions for attainment of standards for photochemical oxidants	51.0

Studies available to EPA indicate that a VMT reduction on the order of 20 percent can be achieved by means other than gas rationing. The remainder of the VMT reduction needed will be achieved through gas rationing.

It is assumed by EPA, and is implicit in the control strategy calculations, that all Federal facilities will comply with State, local Air Pollution Control District, and EPA air pollution emission rules and regulations. Due to the extensive military activities in the San Diego Region and the significant harm to air quality that emissions from these activities could produce, it is particularly important that military vehicles, operations and facilities follow Presidential Executive Order 11507 by conforming to State, local and EPA rules and regulations.

There is presently underway in the San Diego Region a study of possible strategies for meeting the national ambient air quality standards. This study is being conducted by Rand Corporation of Santa Monica, California, and is part of the San Diego Clean Air Project, "Regional Analysis for Meeting Air Quality Standards," being performed by the Integrated Environmental Development Agency under contract number 6704-0270-E. The Clean Air Project is supported by a grant to San Diego County from the Environmental Protection Agency and by a matching contribution from local sources. It is anticipated that the results of this study will be available in time to assist in promulgation of the final EPA plan for the San Diego Region.

The stationary source emissions of hydrocarbons and carbon monoxide projected for 1977 are EPA estimates based on Rand-IREM projections. The Rand-IREM projections used are those that take into account EPA evaluations of hydrocarbon reactivities where possible and the effects of strategies that are now in effect or will be implemented by 1975-77 under the State and San Diego APCD regulations and proposed EPA regulations. It is anticipated that the final Rand-IREM report analysis may provide a basis for the promulgation of more emission reductions and/or cost effective control strategies in the final EPA plan. EPA and representatives of the solvent and paint industries are currently investigating the adequacy of the local air pollution control district regulations exempting certain organic compounds from control. It is anticipated that these regulations (such as Rule 66 of San Diego County) will be re-evaluated prior to 1975 after extensive additional experimental studies.

Aircraft Emissions

Emissions from aircraft engines in 1977 are expected to be approximately 30 percent less than the emissions projected by means of current emission factors. This reduction is due to lower-emission engines that are expected to replace and supplement engines currently in use. Although a reduction is anticipated, the emissions from aircraft are still quite significant. For example, in San

Francisco, aircraft emissions are projected to account for 34 tons/day of reactive hydrocarbons in 1977. The total allowable emissions of reactive hydrocarbons from all sources must be less than 125 tons/day if the national standards for oxidants are to be achieved. Aircraft emissions therefore will account for 27 percent of the allowable emissions in 1977.

Studies have indicated that modification of ground and flight procedures can result in reduced emissions but, the Federal Aviation Administration asserts implementation of these procedures may affect safety. This requires further investigation, and EPA is funding on this matter. There are also other means for reducing aircraft emissions, such as limiting the number of takeoffs and landings and/or percentage of seats occupied on individual flights. The Administrator invites public comments on the potential for reducing aircraft emissions.

Technical Support Document

A discussion of the transportation control strategies proposed for the San Diego, San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Air Quality Control Regions is contained in "Development of Emission Control Strategies for Reducing Emissions in the Air Quality Control Regions of California," prepared under contract to the Environmental Protection Agency and available from the EPA Region IX office at 100 California Street, San Francisco, California 94111.

Public Hearings and Submittal of Written Comments

Public hearings will be held on the proposed transportation control strategies contained herein. Dates and places of the public hearings are:

August 6, 1973

Fresno Convention Center,
700 M Street,
Exhibit Hall Wine Room,
Fresno, California.

AUGUST 7, 1973

California State Building,
1350 Front Street,
Room B109, Auditorium,
Basement,
San Diego, California.

AUGUST 8, 1973

Federal Building
450 Golden Gate Avenue
Ceremonial Court Room
19th Floor
San Francisco, California

AUGUST 10, 1973

Resources Building
1416 9th Street
Auditorium
Sacramento, California

Times. 9:30 a.m. to 12:00 a.m.; 1:30 p.m. to 4:30 p.m.; and 7:00 p.m. until all witness [sic] have been heard.

NOTE: Evening sessions will be held only if witnesses indicate that they can only attend evening sessions or if adequate time is not available during day sessions to hear all witnesses.

The Administrator's final promulgation of transportation controls for all affected air quality control regions in California will be profoundly influenced by the comments and testimony he receives. Persons wishing to give testimony at any of these hearings may do so by stating such intent at the hearing. Although it is not required, persons giving testimony should submit a copy of the testimony to the Region IX Office of the Environmental Protection Agency prior to the hearing date. Interested persons may also participate in this rule making by submitting written comments, preferably in triplicate, to the Regional Administrator, Environmental Protection Agency, 100 California Street, San Francisco, California

94111. All relevant comments received within 30 days of this date will be considered. Receipt of comments will be acknowledged, but substantial responses to individual comments will not be provided. Comments received and copies of the proposal will be available for public inspection at the Regional Office. Copies of the proposal will also be available for inspection at the following locations:

California Air Resources Board
1025 "P" Street
Sacramento, California 95814

Fresno Air Pollution Control District
515 South Cedar Avenue
Fresno, California 93702

San Diego Air Pollution Control District
1600 Pacific Highway
San Diego, California 92101

San Francisco Air Pollution Control District
939 Ellis Street
San Francisco, California 94109

Sacramento Air Pollution Control District
2221 Stockton Boulevard
Sacramento, California 95817

Kern County Air Pollution Control District
1700 Flower Street
P.O. Box 997
Bakersfield, California 93301

Stanislaus County Air Pollution Control District
902 Scenic Drive
Modesto, California 95350

San Joaquin County Air Pollution Control District
1601 East Hazelton Street
Stockton, California 95201

Tulare County Air Pollution Control District
County Civic Center
Visalia, California 93277

The final promulgation for the San Joaquin Valley, San Francisco Bay Area, San Diego, and Sacramento Valley

Regions (as well as for the Metropolitan Los Angeles Region, which was covered under a separate proposal announcement) will take place on August 15, 1973. This notice of proposed rule making is issued under the authority of sections 110(c) and 301(a) of the Clean Air Act.

(42 U.S.C. 1857c-5)

Dated: July 6, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40, of the Code of Federal Regulations as follows:

Subpart F—California

1. Subpart F is amended by adding §§ 52.241 through 52.255 as follows:

§ 52.241 Gasoline limitations.

(a) Definition:

(1) The term "base year" means the consecutive 12-month period commencing July 1, 1972, and ending June 30, 1973.

(2) The term "distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline or diesel fuel between any refinery and any retail outlet.

(3) The term "retail outlet" means any establishment at which gasoline or diesel fuel is sold or offered for sale to the public, or introduced into any vehicle.

(b) This section is applicable in the San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (hereinafter referred to as the Regions), to all distributors of gasoline or diesel fuel to any retail outlet in this area, and to the owners of all retail outlets in this area.

(c) Beginning July 1, 1974, the State of California shall implement regulations limiting the total gallonage of gasoline delivered to retail outlets in the Regions to the amount delivered to such outlets during the base year.

(d) Beginning May 31, 1977, the State of California shall implement regulations limiting the total gallonage of gasoline and diesel fuel delivered to retain [sic] outlets in all regions except the San Joaquin Valley to that amount which, when combusted, will not cause the ambient air quality standards for carbon monoxide and photochemical oxidants to be exceeded. The State shall by January 1, 1977, submit to the Administrator regulations for accomplishing this limitation, specifying the amount for limitation necessary.

(e) In order for the State to determine the amount of gasoline delivered during the base year and years during which control of gallonage is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the Regions during the base year and years during which control is in effect. For each year during which control is in effect, the owner or operator of each retail outlet to which this section applies shall provide the State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year. The State may require any other reports it may deem necessary for the implementation of this section.

(f) The State of California shall submit no later than October 1, 1973, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraphs (c) and (e) of this section, including:

(1) The text of needed statutory proposals and needed regulations which the State will propose for adoption.

(2) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c) of this section is delivered to

retail outlets in the Regions. Such date shall be no later than March 30, 1974.

(3) A date by which any report necessary for establishing such procedures will be furnished to the State by the distributors. Such date shall be no later than January 1, 1974.

(4) Designation of an agency responsible for implementing and monitoring this program.

(f) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a State will be considered to have failed to comply with the requirements of this section if it fails to submit on time any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.242 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles which need emission-control-related maintenance and requiring that such maintenance be performed.

(2) All other terms used in this section which are defined in Part 51, Appendix N of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (hereinafter referred to as the Regions).

(c) The State of California shall establish an inspection and maintenance program applicable to all light-duty vehicles which operate on streets or highways over which it has ownership or control. No later than March 1, 1974, the State shall submit legally adopted regulations

to EPA establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than 1 year apart by means of a loaded (dynamometer) test.

(2) Provisions for inspection failure criteria consistent with the emission reductions claimed in the plan for the strategy. These criteria shall include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities; retest of failed vehicles following maintenance; a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledge to perform the tasks satisfactorily; and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and or a suitable type of physical tagging.

(5) Provisions for beginning the first inspection cycle by June 1, 1975, and completing it by June 1, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After June 1, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle which has not complied with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After June 1, 1976, no owner of a light-duty vehicle shall operate or allow the operation of such vehicle which has not complied with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(f) The State of California shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposals and needed regulations which the State will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation will be submitted.

(g) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to submit on time any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.243 Bus/car-pool lanes.

(a) Definitions:

(1) "Car pool" means a vehicle containing three or more persons.

(2) "Bus/car-pool lane" means a lane on a street or highway open only to buses (or buses and car pools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Major street or highway" means any street or highway which meets the criteria given in paragraph (b) (4) (ii) and (iii) of this section.

(b) This regulation is applicable in the San Diego, San Francisco Bay Area, and San Joaquin Valley Intrastate Air Quality Control Regions, and in the Sacramento County portion of the Sacramento Valley Intrastate Air Quality Control Region.

(1) Each incorporated city within the Regions or portions thereof specified in paragraph (b) of this section shall establish bus/car-pool lanes on the major streets and highways (as defined herein) over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(2) Each county within the Regions or portions thereof specified in paragraph (b) of this section shall establish bus/car-pool lanes on the major streets and highways (as defined herein) over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(3) The State of California shall establish within the Regions or portions thereof specified in paragraph (b) of this section, bus/car-pool lanes on major streets and highways over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(4) Each of the governmental entities named in the previous three subparagraphs shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps which it will take to establish these bus/car-pool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each major street and highway which will have bus-car-pool lanes must be identified and a schedule given for the establishment of the lanes.

(ii) If a major street or highway has four or more traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and car pools) at all times. If only one lane is open to buses (or buses and car pools) at all times, a second lane must be open only to buses (or buses and car pools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a major street or highway has three traffic lanes in one direction, at least one of these lanes must be open only to buses (or buses and car pools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a street or highway, or lane segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not be accepted after September 1, 1973. Special circumstances justifying the need for an exemption or modification (such as inappropriateness of use by buses, designation of bicycle lanes instead, or desire to allow bus/car-pool lanes to be entered briefly by other vehicles for the purpose of crossing a motor vehicle lane or making a right turn) must be given in detail with the application.

(v) Bus/car-pool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Twenty-five percent of the lane mileage for each of the governmental entities must be established and needed signs must be installed by March 1, 1974; fifty percent by June 1, 1974; seventy-five percent by September 1, 1974; and one hundred percent by December 1, 1974.

(vi) Bus/car-pool lanes must be prominently indicated by distinctive painted lines, pylons, or physical barriers.

(vii) A signed statement by the chief executive officer of each governmental entity or his designee which will identify the sources and amounts of funds for all projects.

(5) Buses shall have the right-of-way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "no left turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraph (b) of this section shall convert existing on-street parking spaces to traffic lanes unless the effect will be to increase the number of bus/car-pool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section, or unless the effect will be to create a bicycle lane in place of the parking spaces.

(c) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a governmental entity will be considered to have failed to comply with the requirements of this section if it fails to submit on time any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.244 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land for use as a facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot, or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in the San Diego, San Francisco Bay Area, and San Joaquin Valley Air Quality Control Regions, and in the Sacramento County

portion of the Sacramento Valley Intrastate Air Quality Control Region.

(c) No person, after August 15, 1973, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator, or from an ageny [sic] approved by the Administrator, a permit stating that construction, modification, or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a condition that before a permit may be issued the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the proposed facility will serve.

(v) The number of motor vehicles using the proposed facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include but not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of vehicle miles of travel within any area the air quality of which fails to meet applicable Federal air quality standands [sic].

(3) Agency procedures provide that no permit for the construction, enlargement, or modification of a facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of § 51.4(b) of this chapter; and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. If notice of intent to participate is required, that fact shall be noted prominently in the required notice of hearing.

§ 52.245 Limitation of public parking.

(a) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of ten or more vehicles on a temporary basis.

(b) Each governmental entity or public agency owning or operating an off-street parking facility located within the San Diego, San Francisco Bay Area, or San Joaquin Valley Intrastate Air Quality Control Regions, or in the Sacramento County portion of the Sacramento Valley Intrastate Air Quality Control Region shall, by October 1, 1973, report to the Administrator the number of parking spaces in each such facility under its ownership or control. The number used solely for the storage of vehicles of persons whose residence is within ¼ mile of the facility shall not be counted.

(c) Each such owner or operator of any off-street parking facility located within the area specified in para-

graph (b) of this chapter shall reduce the number of affected parking spaces in each such facility from the number in existence as of October 1, 1973, according to the following schedule: by January 31, 1974, a reduction of 5 percent; by July 31, 1974, a reduction of 10 percent; by December 31, 1974, a reduction of 15 percent; and by April 30, 1975, a reduction of 20 percent.

(d) Each such owner or operator of an off-street parking facility subject to the requirements of paragraph (c) of this chapter shall submit to the Administrator, no later than October 31, 1973, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for marking in a manner obvious to the public (painting over, roping off, etc.) those spaces which are eliminated pursuant to this section and on which parking is no longer permitted.

(e) Failure to submit a compliance schedule as required by this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of a parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.246 Motorcycle limitation program.

(a) Definitions:

(1) "Motorcycle" means any self-propelled two- or three-wheeled motor vehicle capable of carrying one or more persons.

(2) "Two-stroke engine" means an internal combustion engine which requires two strokes of the engine's piston for a complete cycle of operation.

(3) "Registration" means the action of a State which allows a vehicle to be operated on the streets and highways in that State during a defined period of time.

(4) "Registration period" means that period of time that a vehicle is permitted to be used within the State.

(b) This section is applicable in the San Diego, San Francisco Bay Area, and San Joaquin Valley Intrastate Regions, and in the Sacramento County portion of the Sacramento Valley Intrastate Region.

(c) As of January 1, 1974, or during any registration period which commences in the calendar year 1974, the State of California shall not register in the Regions and portions thereof specified in paragraph (b) of this section more motorcycles than the total number registered in 1973.

(d) As of May 1, 1974, the State of California shall prohibit the operation of two-stroke-engine motorcycles in the Regions and portions thereof specified in paragraph (b) of this section between 6:00 a.m. and 8:00 p.m. during the months of May, June, July, August, September, and October.

(e) After January 1, 1974, no person shall operate any motorcycle on the streets and highways of the State within the Regions and portions thereof specified in paragraph (b) of this section which is not validly registered by the State of California or by another State.

(f) No later than October 1, 1973, the State shall submit a detailed compliance schedule showing the steps it will take to implement and enforce these requirements, including:

(1) The text of needed statutory proposals and needed regulations which it will propose for adoption.

(2) A date by which the State will adopt procedures (or submit evidence that they are in existence) necessary to limit the number of motorcycles registered as required above, to restrict the operation of two-stroke motorcycles as required above, and to require the registration of all motorcycles operated as required above.

(3) Proposed procedures (or evidence that they are in existence) to ensure that no motorcycle will be registered by the State in a county other than that of the owner's legal residence.

(g) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, the State will be considered to have failed to comply with the requirements of this section if it fails to submit on time any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.247 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in Part 51, Appendix N of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the San Diego, San Francisco Bay Area, San Joaquin Valley, and Sacramento Valley Intrastate Air Quality Control Regions.

(c) The State of California shall establish a retrofit program to ensure that on or before May 31, 1977, certain gasoline-powered light-duty motor vehicles of model years 1966 through 1974, which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) A provision that starting no later than May 31, 1976, the State of California shall commence retrofitting oxidizing catalysts to those light-duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways any light-duty gasoline-powered vehicle which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards and procedures implementing this section.

(f) The State of California shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.248 Bus/carpool computer matching system.

(a) Definitions:

(1) "Bus/carpool matching" means assembling lists of commuters sharing similar travel needs. The number of commuters on each list identifies potential bus/carpools.

(2) "Time-origin-destination (TOD) information" means information that identifies a commuter's work schedule, home and work location.

(3) All other terms used in this section which are defined in Part 51, Appendix N of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the San Diego, San Joaquin Valley, Sacramento Valley and San Francisco Bay Area Air Quality Control Regions (hereafter referred to as the Regions).

(c) Beginning March 1, 1974, the State of California shall establish a computer-aided bus/carpool matching system which is conveniently available to all employees in businesses having more than 10 employees within the Regions who operate light-duty vehicles on streets or highways over which it has ownership or control. No later than December 1, 1973, the State shall submit legally adopted regulations to EPA establishing such a system. The regulations shall include:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each affected employee receiving an application form with a cover letter describing the matching program.

(ii) Provisions on each application for applicant identification of time, origin, and destination, and the applicant's desire to drive only, ride only, or share driving.

(2) A computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and semi-rural region surrounding incorporated cities with a population greater than 50,000 and matching applicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service such that the master list of all applicants is retained and available for use by new applicants; applications are currently available; and the master list is periodically updated to remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating, overseeing and maintaining the bus/carpool computer matching system.

(d) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act.

§ 52.249 Control of oxides of nitrogen, hydrocarbon and carbon monoxide emissions from in-use vehicles.

(a) The State of California retrofit program, authorized under section 39176 of the State of California Health and Safety Code and established by the California Air Resources Board for the purpose of controlling oxides of nitrogen, hydrocarbon, and carbon monoxide emissions from model years 1955 through 1965 light-duty motor vehicles, shall be extended to the San Joaquin Valley and Sacramento Valley Intrastate Air Quality Control Regions.

(b) Beginning January 1, 1974, the State of California shall commence the operation of this program in the San Joaquin Valley and Sacramento Valley Intrastate Air Quality Control Region.

(c) Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. With regard to compliance schedules, a State will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.250 Control of dry cleaning solvent vapor losses.

(a) For the purpose of this paragraph, "dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(b) This section is applicable in the San Diego, Sacramento Valley, San Joaquin Valley and San Francisco Bay Area Intrastate Air Quality Control Regions. The requirements of this section shall be effective commencing on January 1, 1974.

(c) In addition to the present control regulations for organic solvent users, any dry cleaning establishment that uses solvents containing any organic material listed as reactive under paragraph (k)(1), (2), and (3) of § 52.253 shall in addition reduce the emissions of the remaining organics by 95 percent by use of activated carbon adsorption or other appropriate means.

(d) If incineration is used as a control technique, 95 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide.

(e) Dry cleaning operations using solvents considered nonreactive under paragraph (k) of § 52.253 are exempt from this section.

§ 52.251 Control of degreasing operations.

(a) For the purpose of this paragraph, "degreasing" means any operation using an organic solvent as a surface cleaning agent prior to fabricating, surface coating, electroplating or any other process.

(b) This section is applicable in the San Diego, Sacramento Valley, San Joaquin Valley and San Francisco Bay Area Intrastate Air Quality Control Regions. The requirements of this section shall be effective commencing on January 1, 1974.

(c) No person shall use for degreasing any organic solvent other than perchloroethylene or staurated halogenated hydrocarbons.

§ 52.252 Organic solvent usage (Federal regulation adding to and replacing parts of Rule 66 of San Diego County).

(a) This section is applicable in that portion of San Diego County contained within the metropolitan San Diego Intrastate Air Quality Control Region. This section is effective as of January 1, 1975.

(b) Subdivision (1) of Rule 66 of San Diego County as contained in the local air pollution control district regulations for San Diego County is amended by replacing subparagraph (5) and adding in place thereof subparagraphs (5), (6), and (7). Additional subdivisions are added and identified as (m) and (r). The identities of subdivisions (m), (n), (o), and (p) in the present San Diego regulations are changed respectively to (n), (o), (p), and (q). The amendment is as follows:

(5) The use of any material, in any article, machine, equipment or other contrivance described in subdivisions (a), (b), (c), or (e) if:

(i) The volatile content of such material consists only of water and organic solvents, and

(ii) The organic solvents comprise not more than 20 percent by volume of said bulk content, and

(iii) The volatile content is not photochemically reactive as defined in subdivision (n), and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(6) The use of any material, in any article, machine, equipment or other contrivance described in subdivisions (a), (b), (c), or (e), if:

(i) The organic solvent content of such material does not exceed 20 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in subdivision (n), and

(iii) More than 50 percent by volume of such volatile material is evaporated before entering a

chamber heated above ambient application temperature, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(7) The use of any material, in any article, machine, equipment or other contrivance described in subdivisions (a), (b), (c), or (e) if:

(i) The organic solvent content of such material does not exceed 5 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in subdivision (n), and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame.

(m) All surface coating operations involving the application of surface coatings to metal objects shall, as of January 1, 1975, not be allowed the privilege of discharging into the atmosphere up to 40 pounds of organic material in any one day or 8 pounds in any one hour, as was previously allowed under subdivision (b) of this rule. The surface coating composition and its use must meet all other requirements of this rule.

(r) A person shall not during any one day dispose of a total of more than one and one-half gallons of any photochemically reactive solvent, as defined in subdivision (k) of this rule, or of any such photochemically reactive solvent, by any means which will permit the evaporation of such solvent into the atmosphere.

§ 52.253 Organic solvent usage.

(a) This section is applicable in all portions of all counties contained within the San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions.

(b) A person shall not discharge into the atmosphere more than 15 pounds of organic materials in any one

day or more than 3 pounds in any one hour from any article, machine, equipment or other contrivance in which any organic solvent or any material containing organic solvent comes into contact with flame or is baked, heat-cured or heat-polymerized in the presence of oxygen, unless said discharge has been reduced by at least 85 percent. Those portions of any series of articles, machines, equipment or other contrivances designed for processing continuous web, strip or wire which emit organic materials in using operations described in this section shall be collectively subject to compliance with this section.

(c) A person shall not discharge to the atmosphere more than 40 pounds of organic materials in any one day or more than 8 pounds in any one hour from any article, machine, equipment or other contrivance used under conditions other than those described in paragraph (b) of this section for employing or applying any photochemically reactive solvent, as defined in paragraph (k) of this section, or material containing such photochemically reactive solvent, unless said discharge has been reduced by at least 85 percent. Emissions of organic materials into the atmosphere resulting from air or heated drying of products for the first 12 hours after their removal from any article, machine, or other contrivance described in this section shall be included in determining compliance with this paragraph. Emissions resulting from baking, heat-curing or heat-polymerizing as described in paragraph (b) of this section shall be excluded from determination of compliance with this section. Those portions of any series of articles, machines, equipment or other contrivances designed for processing a continuous web, strip or wire which emit organic materials in using operations described in this section shall be collectively subject to compliance with this section.

(d) A person shall not, after August 31, 1974, discharge into the atmosphere more than 3,000 pounds of organic materials in any one day or more than 450 pounds in any one hour from any article, machine, equipment or other contrivance in which any nonphotochemically reactive organic solvent or any material containing

such a solvent is employed or applied, unless said discharge has been reduced by at least 85 percent. Emissions of organic materials into the atmosphere resulting from air or heated drying of products for the first 12 hours after their removal from any article, machine, equipment, or other contrivance described in this section shall be included in determining compliance with this section. Emissions resulting from baking, heat-curing, or heat-polymerizing as described in paragraph (b) of this section shall be excluded from determination of compliance with this section. Those portions of any series of articles, machines, equipment or other contrivances designed for processing a continuous web, strip, or wire which emit organic materials in using operations described in this section shall be collectively subject to compliance with this section.

(e) Emissions of organic materials to the atmosphere from the cleanup with photochemically reactive solvent, as defined in paragraph (k) of this section, of any article, machine, equipment or other contrivance described in paragraphs (b), (c), or (d) of this section, shall be included with the other emissions of organic materials from that article, machine, equipment or other contrivance for determining compliance with this rule.

(f) Emissions of organic materials into the atmosphere required to be controlled by paragraphs (b), (c), or (d) of this section shall be reduced by:

(1) Incineration, provided that 90 percent or more of the carbon in the organic material being incinerated is oxidized to carbon dioxide, or

(2) Absorption, or

(3) Processing in a manner determined by the Administrator to be not less effective than subparagraph (1) or (2) of this paragraph.

(g) A person incinerating, adsorbing, or otherwise processing organic materials pursuant to this section shall provide, properly install and maintain in caliberation, in good working order and in operation, devices as specified in the authority to construct or permit to operate, or as specified by the Administrator, for indicating temperatures, pressures, rates of flow or other operating conditions necessary to determine the degree and effectiveness of air pollution control.

(h) Any person using organic solvents or any materials containing organic solvents shall supply the Administrator, upon request and in the manner and form prescribed by him, written evidence of the chemical composition, physical properties and amount consumed for each organic solid used.

(i) The provisions of this section shall not apply to:

(1) The manufacture of organic solids, or the transport or storage of organic solids or materials containing organic solids.

(2) The use of equipment for which other requirements are specified by rules or which are exempt from air pollution control requirements by applicable rules affecting the storage of petroleum products, effluent oil-water separators, and the transfer of gasoline.

(3) The spraying or other employment of insecticides, pesticides or herbicides.

(4) The employment, application, evaporation or drying of saturated halogenated hydrocarbons or perchloroethylene.

(5) The use of any material in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The volatile content of such material consists only of water and organic solids, and

(ii) The organic solvents comprise not more than 20 percent by volume of said volatile content, and

(iii) The volatile content is not photochemically reactive as defined in paragraph (k) of this section, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(6) The use of any material in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section if:

(i) The organic solvent content of such material does not exceed 20 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (k) of this section, and

(iii) More than 50 percent by volume of such volatile material is evaporated before entering a chamber heated above ambient application temperature, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

(7) The use of any material in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 5 percent by volume of said material, and

(ii) The volatile content is not photochemically reactive as defined in paragraph (k) of this section, and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame.

(j) For the purposes of this section, organic solvents include diluents and thinners and are defined as organic materials which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents, except that such materials which exhibit a boiling point higher than 220° at 0.5 millimeter mercury absolute pressure or having an equivalent vapor pressure shall not be considered to be solvents unless exposed to temperatures exceeding 220°F.

(k) For the purpose of this section, a photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(1) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cycloolefinic type of unsaturation: 5 percent;

(2) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8 percent;

(3) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(1) For the purpose of this section, organic materials are defined as chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates, and ammonium carbonate.

(m) All surface coating operations involving the application of surface coatings to metal objects shall, as of January 1, 1975, not be allowed the privilege of discharging into the atmosphere up to 40 pounds of organic material in any one day or 8 pounds in any one hour. The surface coating composition and its use must meet all other requirements of this rule.

(n) Architectural coatings and their use shall conform to the following requirements:

(1) A person shall not sell or offer for sale or use in the areas in which this regulation applies, in containers of one-quart capacity or larger, any architectural coating containing photochemically reactive solvent, as defined in paragraph (k) of this section.

(2) A person shall not employ, apply, evaporate or dry in the areas in which this regulation applies, any architectural coating purchased in containers of one-quart capacity or larger containing photochemically reactive solvent, as defined in paragraph (k) of this section.

(3) A person shall not thin or dilute any architectural coating with a photochemically reactive solvent, as defined in paragraph (k) of this section.

(4) For the purpose of this section, an architectural coating is defined as a coating used for residential or

commercial buildings and their appurtenances, or for industrial buildings.

(o) A person shall not during any one day dispose of a total of more than one and one-half gallons of any photochemically reactive solvent, as defined in paragraph (k) of this section, or of any material containing more than one and one-half gallons of any such photochemically reactive solvent by any means which will permit the evaporation of such solvent into the atmosphere.

(p) Compliance schedule: Except as provided in paragraph (q) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this section shall certify such compliance to the Administrator no later than 120 days following the effective date of this paragraph.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(q) Any owner or operator of a stationary source subject to paragraph (p)(1) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions in paragraph (p) of this section as expeditiously as practicable but no later than July 31, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: Submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of onsite construction or installation of emission control equipment or process modification; completion of onsite construction or installation of emission control equipment or process modification; and final compliance.

(r) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.254 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in those portions of counties contained within Sacramento Valley and San Joaquin Valley Intrastate Air Quality Control Regions in the State of California.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 95 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 95 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system

or the equivalent, which can recover at least 95 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(d) The provisions of this paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry, as such vehicles are defined in Division 16 (section 36000, et seq.) of the California Vehicle Code: *provided, however,* Said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedule: Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments

of progress shall include, but not be limited to: submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of onsite construction or installation of emission control equipment or process modification; completion of onsite construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.255 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in those portions of counties contained within the Sacramento Valley and San Joaquin Valley Intrastate Air Quality Control Regions in the State of California.

(c) A person shall not transfer gasoline to an automobile fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 95 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, adsorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.254 paragraph (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks on vehicles existing at the time of promulgation of this regulation.

(g) The State of California shall divide all facilities subject to this section into two classes each of which taken as a whole emit approximately equal amounts of hydrocarbon materials. The classes shall be known as Class I and Class II.

(h) Except as provided in paragraph (j) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of onsite construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) Paragraphs (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by September 15, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by September 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(k) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

* * * *

[40 CFR Part 52]

DISTRICT OF COLUMBIA; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the District of Columbia for attainment of the primary National ambient air quality standards for carbon monoxide (CO) and photochemical oxidants for the District of Columbia portion of the National Capital Interstate Region was disapproved in part on June 15, 1973 (38 FR 16556). This Notice of Proposed Rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the District of Columbia plan to attain and maintain the National standards for carbon monoxide and photochemical oxidants in the District of Columbia portion of the National Capital Interstate Region.

If revisions to the District plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the District plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the District of Columbia portion of the National Capital Interstate Region be a Regional plan carried out by the District or its designated representative.

Transportation Control Alternatives

Analysis of the air quality problems in the National Capital Interstate Region, of which the District of Columbia is a part, reveals that both photochemical oxidants and carbon monoxide exhibit unacceptably high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producing hydrocarbon emissions stem from the vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs, and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, and/or limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicles, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day week, and programs promoting the use of carpools or alternative modes of transportation and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted by the District of Columbia must be reflected by identical or equivalent measures in the neighboring jurisdictions of Maryland and Virginia for their portions of the National Capital Interstate Region.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective complement facilitating use of this alternative to the private automobile. Clearly, public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

SUMMARY

The District of Columbia plan, as amended by the July 9, 1973 and July 16, 1973 submissions, in its demonstration of the attainment of the photochemical oxidant and carbon monoxide air quality standards, utilizes the following general measures: the Federal Motor Vehicle Control Program, a Motor Vehicle Inspection Program for all gasoline powered vehicles, improvements in public transportation, increased "terminal" (or parking) charges, a bus/car pool locator program, selective control of goods movement, restrictions on aircraft ground operations, and increased control of stationary source emissions.

According to the District of Columbia plan, which utilizes data compiled by the Metropolitan Washington Council of Governments for the entire National Capital Interstate Region, peak period hydrocarbon emissions were 63.3 tons for the Region as a whole and peak period carbon monoxide emissions were 1133.5 tons in 1972. In order to demonstrate attainment of standards, the Council of Government calculations indicate that hydrocarbon emissions must be reduced by 67 percent of the 1972 emissions in the National Capital Interstate Region to a level of 20.9 tons/peak period, and that carbon monoxide emissions must be reduced by 55.6 percent of the 1972 emissions in the Region to a level of 501 tons/peak period.

Including projected increases in vehicle miles of travel the Federal Motor Vehicle Control Program will reduce hydrocarbon peak period emissions by 47 percent to 33.6 tons and will reduce carbon monoxide emissions by 49 percent to 576 tons/peak period by 1977. These estimates are adjusted to reflect the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

Since the 21-day period for public comment on the additional submissions has not been completed, it is impossible for the Administrator to make a final decision on approval or disapproval of the strategies included in the District of Columbia plan at this time. This decision

must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable additional measures will be proposed.

The information contained in the additional submissions by the District appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the District of Columbia Plan:

Federal Motor Vehicle Control Program—Reductions appear to be approvable, based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—Appears to be approvable based upon proposed regulation and supporting data.

Improvements in Public Transit—(a) District participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling)—appears to be approvable.

Increased Terminal Charges—(a) Elimination of free employee parking for District of Columbia Government employees and private employees in certain areas—appears to be approvable.

(b) Elimination of on-street long-term parking in certain areas—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—Appears to be approvable.

Selective control of goods movement (heavy duty gasoline powered vehicle use ban 6:00-9:30 a.m. and 4:00-6:30 p.m.)—Appears to be approvable.

Restrictions on aircraft ground operations—Partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—Not approvable at this time due to lack of adopted regulations.

Since full reductions claimed for aircraft emissions do not appear to be allowable, and the controls over stationary sources cannot be approved at this time, EPA is proposing the following measures:

Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

Retrofit of light-duty 1971-1975 fleet vehicles (including federal government vehicles) and taxicabs and certain 1975 model light-duty vehicles with an oxidizing catalyst retrofit—beginning in mid-1976 to be completed by mid-1977.

Further controls over emissions of hydrocarbons due to gasoline handling; both from delivery truck to underground tank, and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

Further controls over drycleaning operations beginning in 1974.

The District plan also indicated that the elimination of free Federal employee parking was essential to the success of their transportation control strategy. It further encouraged the Federal Government to take direct action to implement this portion of the strategy.

Accordingly, EPA is also proposing to institute commercial type parking rates or reduce by 12 percent the available spaces at any federal facility which is in a high density employment area and which is well serviced by public transit. The commercial rates would go into effect January 1, 1975, and the reduction would be phased, beginning November 30, 1974 and ending on May 31, 1975.

Finally, since the $2.00 surcharge proposed by the District is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

Two-Year Extension to Achieve Standards

The Administrator proposes to give a two-year extension for the attainment of the standard in the District of Columbia. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available" within the meaning of section 110(e) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals, such as gasoline limitations and a selective vehicle exclusion program involving colored tags, the reduction in vehicle miles traveled expected from measures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the District of Columbia, apply the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

Summary of Effects

The following table is a summary of the effect of the proposed strategies on the total reductions required.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE NATIONAL CAPITAL INTERSTATE REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Peak Period	Percent of Total Reduction Required	Tons per Peak Period	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expected Reductions From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Stationary Source Rule Strengthening	0	0	0	
Stationary Source Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicles without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.9
(f) Aircraft Ground Operations		12	0.8	6.4
Mobile Emissions Remaining	416		12.7	
Total Emissions without Strategy (FMVCP Included	576		33.6	
Total Reductions	82	109.3	12.7	100.2
Total Emissions Remaining	494		20.9	

Proposed Controls on Stationary Sources

The major stationary sources of hydrocarbon emissions which have been identified in the District of Columbia's plan, are the gas handling losses which occur in the distribution system for gasoline fuel, and the emission losses from dry cleaning establishments. Since present regulations are inadequate to effect any substantial control on the resultant emissions, the District of Columbia has proposed regulations and compliance schedules which would reduce gasoline handling losses by 90 percent and dry cleaning losses by 85 percent.

The regulation proposed by the District of Columbia for control of hydrocarbon emissions through vapor recovery during service station and automobile tank refueling operations requires the installation by May 31, 1975 of a vapor collection and disposal system which is 90 percent effective, on all loading facilities for tank trucks or trailers, railroad tank cars, locomotives, aircraft, or stationary storage tanks with a capacity of more than 250 gallons; and for boat or motor vehicle fuel tank filling equipment applied to facilities with a capacity greater than five gallons. The proposed regulation further requires provision for a means to prevent liquid organic compound drainage from the loading device when it is removed from the hatch. It is estimated that installation of 90 percent effective vapor recovery devices on all installations throughout the Region will result in a total reduction of hydrocarbon emissions of 5.0 tons/peak period by 1977.

The regulation proposed by the District of Columbia for elimination of dry cleaning losses require that all dry cleaning operations emitting more than three pounds per hour or 15 pounds per day of photochemically reactive hydrocarbons shall install, prior to January 1, 1975, control devices to reduce such emissions by at least 85 percent of the uncontrolled emissions. It is estimated that the effect of the proposed 85 percent control of dry cleaning losses throughout the National Capital Interstate Region will result in a total reduction in hydrocarbon emissions of 1.1 tons per peak period.

The foregoing regulations as proposed by the District of Columbia appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR Part 51 requires that all regulations dealing with the control of emissions from stationary sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent regulations as adopted by the District of Columbia.

The Environmental Protection Agency has also examined the District of Columbia's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For degreasing operations, there are no specific requirements that non-reactive material be used such as perchlorethylene or saturated hologenated hydrocarbons. Comments are solicited on whether degreasing operations in the National Capital Interstate Region are a significant source of reactive hydrocarbon emissions for which a specific regulation should be promulgated.

Emissions of other solvents in the National Capital Interstate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb. per day category) involving organic solvents.

Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on premises of small sized firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. L.A. Rule 66 contains minor exceptions involving evaporative emissions from gallon (or smaller) sized containers of architectural coating compounds, and from the allowable disposal limits of waste solvent materials. There are no data presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions though they are presently believed to be very small.

Proposed Controls on Mobile Sources (Non-Aircraft)

The District of Columbia, in its submissions proposes a loaded emissions inspection program in conjunction with its existing annual safety inspection program. The

July 9, 1973 submission proposes a 13% reduction in hydrocarbon emissions from private and commercial vehicles. Therefore, this part of the District of Columbia plan appears to be approvable. Anticipated emissions reductions from the inspection/maintenance program as proposed throughout the National Capital Interstate Region, are 1.5 tons per peak period for hydrocarbons and 26 tons per peak period for carbon monoxide.

In order to comply with the requirements of the Clean Air Act that primary standards be achieved as expeditiously as practicable, the Administrator proposes to promulgate a regulations [sic] requiring that on or before January 1, 1975, all pre-1968 light duty vehicles be retrofitted with a vacuum spark advance disconnect device which will reduce hydrocarbon emissions from such vehicles by 25 percent and carbon monoxide emissions by 9 percent. If implemented throughout the National Capital Interstate region, installation of these devices will result in a total reduction of hydrocarbon emissions of 0.4 tons per peak period and a reduction of 3.0 tons per peak period of carbon monoxide emissions.

In order to attain the primary air quality standard by May 31, 1977 additional measures are required beyond those proposed by the District of Columbia. Since catalytic retrofit devices for light duty vehicles are expected to be readily available by 1977, it is proposed to require installation of these devices on selected segments of the light duty vehicle population. These segments include all 1971-1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline. The regulation proposed by the Administrator will require that the above motor vehicles be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50% hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidizing catalytic converter or those vehicles which are certified to meet the original statutory federal emission standards for 1975. Based on information currently available to him, the Administrator estimates that:

Fleet vehicles account for 6 percent of total mobile source emissions. Under the assumptions that one-third of the fleet vehicles will be older than two years (pre-1976), and catalytic retrofits can reduce automotive emission by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, such as catalytic retrofit of other segments of 1968-1975 light duty vehicle population. Candidate segments include all light duty trucks, or passenger vehicles of specified model years. The public is urged to comment on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

Proposed Reduction in VMT

According to computer printouts provided by the Metropolitan Washington Council of Governments, the District of Columbia's transportation package (including participation in the area wide expansion of transit by 750 buses, exclusive bus/carpool lanes, a carpool locator service, and extensive parking restrictions) will result in a 12 percent reduction in 6-9 a.m. VMT and a corresponding reduction in total trips during those hours.

The total commitment of the District of Columbia to the transportation package is demonstrated by submission of proposed regulations for the following supportive measures:

1) Participation in the area wide improved transit system, including the addition of 750 buses to the current area fleet and the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.

2) Increased terminal cost, including the elimination of free parking and the establishment of a $2.00 parking surcharge for long-term commuter parking in all areas served adequately by mass transit, and strict enforcement of reciprocal parking agreements.

3) Establishment of a computerized carpool locator service.

This portion of the plan is central to the District of Columbia's plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. *Elimination of Free Parking*—The District of Columbia proposes to eliminate free parking for the District of Columbia government employees, and for employees of private businesses located in the District of Columbia. A portion of this shall be achieved by the elimination of street commuter parking (in major arterials) and by requiring all District of Columbia government employees and all privately operated lots which are providing free employee parking to establish charges for this parking.

These measures will be imposed in high density employment areas which are adequately served by mass transit. These areas will be more specifically described by the District within the next 10 months, upon completion of studies of the matter.

Additionally, the District proposes to enter into a reciprocal enforcement program for parking violations. Thus, enforcement of the existing parking regulations will be facilitated.

On the basis of the information submitted by the District of Columbia in its plan, the Administrator feels that this portion of the District of Columbia's plan is approvable.

As pointed out in the District of Columbia's plan, (reduction) [sic] of emissions due to work trips into, out of and within the District by Federal Government employees is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid the District in the control of these emissions. As a result, EPA will follow the District's suggestion and propose a federal regulation which would effectively reduce emissions as a result of commuter trips by federal employees. This will be done by requiring Federal Facilities in high density areas served by mass transit either to eliminate free parking

by establishing commercial type rates or to reduce the available parking spaces in these facilities by 12 percent. The Administrator feels that the result of this proposal will be to induce Federal employees to utilize alternate modes of transportation, such as buses and carpools and thereby reduce the VMT in the area. It should be noted that this proposal should result in a reduction of the VMT for employees from all three jurisdictions in the National Capital area.

It is the Administrator's opinion that, at a minimum the central business district (Massachusetts Avenue, 1st Street NW.; Constitution Avenue and 23rd Street, NW.) as well as the Southwest Mall-Waterside Mall area in Southwest, the Capitol Hill area, along with other areas would, in all likelihood, need to be included in any definition of high density employment area which is serviced by mass transit for this strategy to be effective.

b. *$2.00 Surcharge.* The District of Columbia plan proposes the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long-term commercial parking facilities in employment areas which are adequately served by mass transit. Identification of the areas where the surcharge is to be imposed should be made by the District of Columbia within the next 10 months, upon completion of studies of the matter.

This proposal is to be implemented and enforced by the parking agency to be established by the District. The Administrator feels that if implemented according to the schedule provided in the plan, this proposal is approvable.

The effectiveness of mass transit systems can be greatly enhanced by imposing disincentives to the use of the private automobile. It is felt the District's proposals [sic] for the surchage is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not implemented according to schedule, he will institute equivalent measures. In order to avoid any delay in implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the

plan which will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15 percent reduction in existing off-street parking spaces would be imposed, as well as ban [sic] on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator. Public comments are solicited on these contingency proposals.

c. *Mass Transit Improvements.* The development of an effective mass transit system is essential to the development of an effective transportation control strategy. If the strategy is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided.

The District of Columbia plan proposes that the District shall take all possible measures to assure that the area wide transit system's current fleet be increased by 750 buses and that its service and convenience for commuters be improved. Included in this proposal are provisions for installing bus shelters, providing additional public information and improved scheduling. In addition, the District plans to institute a number of exclusive bus lanes, and contra-flow lanes on major highway corridors into the downtown area. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the three documents submitted by the District, the Administrator feels that the proposals for increased mass transit are approvable, on the condition that certain administrative details are provided to him by the District. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on [sic] the schedule showing the projected incremental increases in fleet size should be provided.

d. *Bus/Car Pool Locator System.* The District of Columbia plan recognizes the need for more efficient automobile usage. Thus, the plan proposes a voluntary bus/car pool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, work locations, and will be phased in starting with pilot projects during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this system also will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. *Heavy Duty Vehicle Restraints.* In addition to the transportation measures described above, the District of Columbia plan proposes to reduce emissions from heavy duty gasoline powered vehicles. Since a substantial portion of the peak hour emissions of both hydrocarbons 6 percent and carbon monoxide 10 percent are produced by heavy duty trucks, the District of Columbia proposes a regulation which would ban peak hour (6-9:30 a.m., 4-6:30 p.m.) deliveries by gasoline-powered heavy duty trucks. Proposed compliance dates are January 1974 for the morning hours and January 1975 for the two peak periods. Assuming that the ban will result in a 50 percent reduction in heavy duty truck emissions (due to the exception of essential services and through traffic), calculations indicate a peak-hour reduction in total hydrocarbon emissions by 1.0 ton/peak period. The Administrator commends the District of Columbia for proposing this effective measure and feels that this measure is approvable.

Aircraft Emission Reduction

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climbout. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The District of Columbia Transportation Control Plan asserts that control of these emissions through modified

ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide emission reduction in the National Capital Region. The District of Columbia contends that a 50 percent reduction in hydrocarbon and carbon monoxide emissions can be achieved though the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and 28 ton reduction in the area's carbon monoxide emissions. The District of Columbia assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standard.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be afe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport versus 50 percent reduction proposed by the District of Columbia. No reductions are assumed for Andrews Air Force Base, which is responsible for 15 percent of the emissions inventory. In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and

acceptable prior to 1977, the Agency believes it is reasonable to allow the District of Columbia to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons hydrocarbon reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

Economic and Social Impact

The social and economic consequences of the measures included in the District of Columbia plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the government. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other resources and have contributed to the decay of urban centers.

PUBLIC COMMENTS SOLICITED

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the District of Columbia portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearing will be held in the Department of Commerce Interior [sic] departmental Auditorium, 14th Street between E and Constitution Avenues, N.W., Washington, D.C. on September 5, 1973, beginning at 9:00 a.m. Notice of the hearing on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the District of Columbia.

The Administrator's final promulgation of transportation controls for the District of Columbia will be significantly influenced by the comments and testimony he receives, as well as any additional approval strategies submitted by the District of Columbia as part of the District of Columbia plan before or at the hearing. These

influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rule making by submitting comments, preferably in triplicate, to EPA, Attention: Mobile Sources Enforcement Division, 401 M Street SW., Washington, D.C. 20460. All relevant comments received on or before September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at EPA. Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

EPA STUDIES AND GUIDELINES

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study".

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas", December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Sep-

arate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles", November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures", FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines", FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control". This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions.

g. "An Air Pollution Impact Methodology for Airports—Phase I", APTD-1470, January, 1973.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

§ 52.486 Reduction of Employee Parking.

(a) Definitions:

(1) Government Entity—means a federal, department, agency, bureau, board, office, commission, district, or unit

of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment, even though such transit may not serve the area of the employee's residence.

(b) This section shall be applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) (1) All facilities or installations owned, operated or leased by federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c) (1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility, and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced location [sic] such as (Federal Triangle, Southwest Mall, Georgetown, Capitol Hill, etc.) to the facility or installation during morning and afternoon peak hours.

(ii) A summary of the existing parking situation at the facility including:

(a) average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(b) the percentage of vehicles with one, two, three and four occupants.

(c) the total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d) Each governmental entity subject to paragraph (c)(1) of this section which in the opinion of the Administrator is served by public transit shall comply with either paragraph (d)(1) or (2) of this section. The governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In no case shall the charge be less than $20.00 per space per month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *Provided, however,* That no such funds shall be used to subsidize directly or indirectly employee parking; or

(2) Adopt a plan to reduce the number of parking spaces in each facility from the number in existence on October 15, 1973, according to the following schedule:

(i) by November 30, 1974, a reduction of 4 percent

(ii) by February 28, 1975, a reduction of 8 percent.

(iii) by May 31, 1975, a reduction of 12 percent

(e)(1) Each entity of the Federal government subject to paragraph (c) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious

to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the change. Such date shall be no later than January 31, 1975,

(ii) The amount to be charged per space per month,

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions,

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(f) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges, shall likewise be in violation and subject to enforcement.

§ 52.487 Limitation of Off-Street Parking.

(a) This section shall apply only in the event that the Administrator finds that the District of Columbia fails to take one or more of the following steps to implement the $2.00 surcharge (for an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the District of Columbia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the District of Columbia chooses to adopt any "equivalent measure" to this surcharge, the District of Columbia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the District of Columbia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the District of Columbia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the District of Columbia portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regulation becomes effective according to the following schedule:

(i) Within 90 days of the effective date—a 5 percent reduction;

(ii) Within 120 days of the effective date—a 10 percent reduction;

(iii) Within 180 days of the effective date—a 15 percent reduction.

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.488 Vacuum Spark Advance Disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The District of Columbia shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, [sic] as a minimum, the following:

(1) A date by which the District of Columbia will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e) (2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(1) The District of Columbia shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehice that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the District of Columbia will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.489 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(o) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of this paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) *Compliance schedule.* Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The comliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to:

submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.491 Elimination of drycleaning losses.

(a) Definition:

(1) Drycleaning Operation means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric material.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) After May 31, 1974, no person shall operate a drycleaning operation unless the uncontrolled organic emissions from such operation have been reduced at least 85 percent, except that drycleaning operation emitting less than three (3) pounds per hour and less than fifteen (15) pounds per day are exempt from this regulation.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide.

(f) Any person who fails to fulfill any requirement of this section shall be in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

§ 52.493 Management of parking supply.

(a) This section shall apply only in the event that the Administrator finds that the District of Columbia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the District of Columbia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the District of Columbia chooses to adopt any "equivalent measure" to this surcharge, the District of Columbia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the District of Columbia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the District of Columbia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(b) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(c) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data

concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type[;] the notice shall conform to the requirements of 40 CFR 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.490 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.489 (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks or vehicles existing at the time of promulgation of this regulation.

(g) The District of Columbia shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress; whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraphs (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the District and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(l) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any

source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.492 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal Government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b)(1) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered: (1) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalyst, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The District of Columbia shall establish a retrofit program to insure that on or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in paragraph (b)(2) of this section, which are subject under presently existing legal requirements to registration

in the area defined in paragraph (b) of this section and are used on the streets and highways, of the District, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the District of Columbia shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the District of Columbia shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the District shall not register or allow to operate on public streets or highways any light duty gasoline-powered vehicles specified in paragraph (b)(2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The District of Columbia shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will proposed [sic] for adoption.

The compliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of applicable implementation plan and subject to enforcement under § 113 of the Clean Air Act. The District will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc. 73-15626 Filed 8-1-73; 8:45 am]

[40 CFR Part 52]

MARYLAND; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the State of Maryland for attainment of the primary national ambient air quality standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the Metropolitan Baltimore Intrastate Air Quality Region, hereafter called the Metropolitan Baltimore Intrastate Region, was disapproved in part on June 15, 1973. This notice of proposed rule making sets forth regulations which in the Administrator's judgment could be implemented in addition to the approved portions of the Maryland plan to attain and maintain the national standards for carbon monoxide and for photochemical oxidants in the Metropolitan Baltimore Intrastate Region.

If revisions to the State plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the State plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide standard and the photochemical oxidant standard in the Metropolitan Baltimore Intrastate Region be a State plan carried out by the State or its designated representatives.

SUMMARY

Portions of the Maryland plan were not approved on June 15, 1973, because the justification for claimed reductions and the procedures for administration, enforcement, and monitoring of the strategies were not adequate. Although some of the general strategies proposed in the plan were approved, the specific control strategy package was not approved. The specific control strategies in the

State plan did not guarantee a sufficient degree of carbon monoxide and hydrocarbon emission reductions to justify a finding that carbon monoxide and photochemical oxidant air quality standards would be attained.

Maryland, by letter from Governor Marvin Mandel, has made a request for a 2-year extension until May 31, 1977, to meet the carbon monoxide and photochemical oxidant air quality primary standards. This would be the maximum extension permitted under section 110(e) of the Clean Air Act. On January 31, 1973, the opinion of the U.S. Court of Appeals for the District of Columbia in the case of Natural Resources Defense Council Inc., et al. v. Environmental Protection Agency (Civil Action No. 72-1522) and seven related cases required EPA to apply a very stringent standard of review to State extension requests. Maryland's submittal does not itself contain sufficient supporting data on the technical infeasibility of the available control strategies nor does it show adequate consideration of available alternative strategies.

However, based on EPA's own evaluation and analysis we have determined that the hardware necessary for retrofitting substantial numbers of light-duty vehicles with catalytic converters will not be available to meet standards until May 31, 1977. If evidence presented at the public hearings or submitted to the Agency during the comment period indicates that this 2-year extension is not justified, appropriate revisions will be made in our final promulgation.

The EPA-proposed regulations are designed to correct specific deficiencies in the State plan. A regulation is proposed to accelerate the implementation of the Maryland-proposed program which would prohibit the State of Maryland from registering or allowing the operation of vehicles which cannot show proof of satisfactorily passing a loaded emission test. Because the State plan lacks specific assurances of emission reductions from improvements to public transportation, regulations are proposed to establish exclusive bus/carpool lanes, restrict on-street parking, restrict the establishment of additional parking facilities, and require the establishment of a bus/carpool computer matching system.

A regulation also is proposed to require a Vacuum Spark Advance Disconnect (VSAD) retrofit by 1975 of all pre-1968 light-duty vehicles and an oxidizing catalyst retrofitting by 1977 of certain light-duty vehicles of model years 1968-1975 inclusive. Also proposed are regulations requiring gasoline marketing vapor controls to reduce hydrocarbon loss during transfer of gasoline. As a final assurance of adequate emission reductions, a regulation is proposed to limit gasoline sales in the Region to their base year levels beginning July 1, 1974, and to limit them to 40.5 percent of their base year levels beginning May 31, 1977.

The strategies proposed herein, when taken together with the effects of the Federal Motor Vehicle Control Program, are projected to achieve more than the 57 percent reduction in carbon monoxide base year (1972) emissions required to meet the national ambient air quality standard for carbon monoxide by May 31, 1977, and will achieve the 70 percent reduction in hydrocarbon base year (1972) emissions required to meet the national ambient air quality standards for photochemical oxidants by May 31, 1977 in the Metropolitan Baltimore Intrastate Region.

EPA is also considering the promulgation of additional control measures and requests public comment on the applicability of these measures to the Metropolitan Baltimore Intrastate Region. Candidate measures include phased reductions of public parking facilities, motorcycle limitation programs, the expanded use of any existing rail right-of-way, and establishment of bikeways.

In addition, EPA is evaluating the potential of increasing the stringency of certain proposed regulatory measures. The proposed inspection and maintenance regulations incorporate a 30 percent failure rate which could be expanded to 50 percent and gain additional emission reductions. Furthermore, Maryland has in effect regulations for organic solvent use and control of degreasing operations. Though these regulations are believed to be

reasonable, further examination may indicate that additionally stringent measures are necessary. Pending review of public comments and additional EPA evaluation of these control measures and/or modifications, EPA may include some, if not all, of these potential strategies in the final promulgation.

Transportation Control Alternatives

Analysis of the air quality problems in the State of Maryland reveals a photochemical oxidant problem and a carbon monoxide problem within the Metropolitan Baltimore Intrastate Region.

Since a substantial proportion of the photochemical oxidant problem and virtually all of the carbon monoxide problem stems from emissions from individual motor vehicles, measures to reduce emissions and measures to reduce vehicular travel can be effective in improving air quality. Reductions in emissions from vehicles can also be obtained through inspection and maintenance programs and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions and/or limitations of available number of parking spaces, and programs promoting the use of bus/carpools.

Direct vehicle restraints may also be necessary. These can take the form of limitations on gasoline distribution or of restricting access of vehicles to areas of high pollutant concentrations. In the Metropolitan Baltimore Intrastate Region, where the greatest threat to air quality is an area-wide photochemical oxidant pollution generated by hydrocarbon emissions, an area-wide limitation on gasoline distribution would be an effective approach.

In solving the pollution problem, improvements to public transportation are a desirable and effective complement to restraints on automobile use. Such improvements as greater coverage, increased frequency of service, improved reliability, improved comfort, and adequate personal security would further encourage the use of public transit alternatives.

Proposed Additional Control Strategies

The Maryland plan as amended by the June 15, 1973 submission, attempts to demonstrate attainment of the photochemical oxidant and carbon monoxide air quality standards through utilization of five general measures: the Federal Motor Vehicle Emissions Control Program; a State-wide, State-run Motor Vehicle Inspection Program for all gasoline-powered vehicles; improvements to public transportation; retrofit of heavy-duty gasoline-powered vehicles; and major stationary source restrictions.

The Maryland plan, which utilizes data gathered in the physical area defined by the Baltimore Metropolitan Area Transportation Study (BMATS), reports peak-period hydrocarbon emissions were 57.7 tons and carbon monoxide emissions were 507,800 tons per year in 1972. In order to demonstrate attainment of the standards, the State of Maryland calculations indicate that hydrocarbon emissions must be reduced by 70 percent of the 1972 emissions in the BMATS area to a level of 17.3 tons/peak period and that carbon monoxide emissions must be reduced in the BMATS area to a level of 217,800 tons/year.

Including projected increases in vehicle miles of travel, the Federal Motor Vehicle Emissions Control Program will reduce hydrocarbon peak-period emissions by 31 percent to 39.7 tons and will reduce carbon monoxide emissions by 32 percent to 345,100 tons/year by 1977. These estimates are adjusted to include the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

To provide the required additional reductions to attain the national ambient air quality standards as expeditiously as practical, several measures for controlling mobile sources and reducing VMT are proposed. Mobile source controls include the early initiation of a State vehicle inspection program and the retrofitting of certain light-duty gasoline-powered vehicles. VMT reductions to be realized through improvements to public transportation are augmented and supported by proposed measures

providing for encouragement of bus/carpools, parking restrictions and limitations, and a gasoline distribution limitation.

In order to ensure that national ambient air quality standards will be achieved as expeditiously as practicable, the following VMT reduction measures will be implemented by May 31, 1975:

1. Gasoline distribution limitations to their base year (July 1, 1972-June 30, 1973) levels.
2. Public transportation improvements including exclusive bus lanes and parking restrictions.

Moreover, the Administrator is considering the promulgation of additional control strategies which he believes can possibly provide further support to assure attainment of the needed reduction in VMT. The Administrator encourages testimony on a program calling for the phased reduction of public parking spaces in the CBD and other trip attraction centers by as much as 20 percent by mid-1975. Also solicited is testimony on the possibility and advisability of the expanded use of existing rail right-of-way and motorcycle limitation programs.

The final promulgation may include measures not explicitly proposed herein if, on the basis of information provided to the Administrator, they appear at the time of the final promulgation to be the most effective and reasonable means of attaining standards.

Proposed Reductions in VMT

According to the Maryland plan, improvements to public transportation are credited with reducing vehicle miles of travel by 13 percent in the BMATS area. This VMT reduction is expected to reduce by 13 percent light-duty mobile emissions of both hydrocarbons and carbon monoxide in that area. Improvements proposed include establishing exclusive bus lanes, purchase of new buses, and promotion of carpools; however, implementation schedules are not firm and hence provide no assurance for claimed reductions. To help ensure that the State's reductions

claimed for mass transportation improvements will be achieved, the Environmental Protection Agency is proposing four additional regulations: provision of exclusive bus/carpool lanes, limitation of on-street parking on those streets with exclusive bus lanes, limitations on the construction of additional parking facilities, and the establishment of a computerized bus/carpool service.

Although the implementation of stationary source controls, inspection/maintenance of light-duty gasoline-powered vehicles, improvements to public transportation, retrofit of certain light-duty gasoline vehicles, and the above four additional regulations will enable the carbon monoxide standard to be achieved in 1977, these measures alone will not be sufficient to meet the standards for photochemical oxidants by 1977.

An additional reduction of 11.5 tons/peak period of hydrocarbon emissions is required. To attain this reduction, EPA proposes a phased gasoline distribution limitation, by limiting gasoline distribution by mid-1975 to the base year level and by reducing the distribution by mid-1977 to 40.5 percent of the base year level.

The Clean Air Act of 1970 requires attainment of the national ambient air quality standard as expeditiously as practicable but in no case later than May 31, 1975, unless the necessary technology or other control methods are not reasonably available by that date. In the latter event, an extension of time for achieving the standards until no later than May 31, 1977, may be granted, but all reasonably available alternatives must be implemented by May 31, 1975, along with such measures during the pre-1977 interim period as are deemed to be reasonably available. In the Metropolitan Baltimore Intrastate Region, a number of reasonable strategies (inspection/maintenance, gasoline distribution limitation, vacuum spark advance disconnect for light-duty vehicles, volatile organic loading facilities, preferential bus treatment, on-street parking and new parking facility limitations, and a computerized bus/carpool service) will be operative in 1975. However, because of hardware unavailability and long lead times involved in the acquisition of mass trans-

portation equipment and in the installation of advance retrofit devices, the total strategy cannot be completed until May 31, 1977. The gasoline distribution limitation strategy must, by its very nature, rely heavily on the other proposed strategies. The percentage reduction in 1977 from the gasoline limitation program is projected to be 59.5 percent of the base year levels of gasoline consumption.

The proposals described above are the only ones for which regulatory language has been included in this proposal. However, EPA will also consider other VMT reduction measures as part of this rulemaking proceeding, and they may be included in the final promulgation if they are found to be the most feasible methods for achieving the standards. In particular, EPA will explore the possibility of reducing VMT by the phased reduction of the number of public parking spaces in CBD's and other trip attraction centers by as much as 20 percent by mid-1975, establishment of a more sophisticated mass transit system, selective conversion of traffic lanes on roads to the exclusive use of buses and carpools, adoption of more restrictive on-street parking regulations, increased parking charges, and adoption of more stringent enforcement methods. Measures to promote the use of bicycles and to limit the use of motorcycles will also be considered. Comments on these and other VMT reduction measures are particularly solicited.

Proposed Controls on Stationary Sources

Although Maryland has either existing or proposed regulations to control stationary sources, its proposal to reduce hydrocarbon emissions through vapor recovery during service station and automobile tank refueling operations was not supported by proposed regulations which the State committed itself to adopt as required by 40 CFR 51.14(a)(ii). In the plan addendum of June 28, 1973, Maryland's intent to adopt such regulations was indicated. This submission is now being evaluated. To ensure the reduction of 1.8 tons/peak period claimed for

this measure, EPA is proposing a regulation to require 90 percent recovery of hydrocarbon vapors during loading of service station storage tanks and during transfer of gasoline to automobiles. If the Maryland proposal of June 28, 1973, is satisfactory, the regulation proposed by EPA herein will be withdrawn.

Existing organic solvent regulations require that all present drycleaning installations emitting more than 200 pounds per day of photochemically reactive hydrocarbons shall reduce present emissions by at least 85 percent, and that the limit for new installations shall be 40 pounds per day. Although the full effect of the existing regulations through natural attrition would not be felt until 1987, the additional requirement that all solvent users must be fully controlled by 85 percent of uncontrolled emissions would result in a negligible reduction of 0.03 tons per peak period, or 0.14 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. The administrator is aware of Maryland's ongoing program for the control of hydrocarbon emissions from dry-cleaning installations and is presently evaluating the proposed regulation which would accelerate the program by attaining full compliance by the proposed May 31, 1974 date. Consequenly, no regulation is being proposed by EPA at this time on the assumption that Maryland is proceeding expeditiously to control this relatively small source category of hydrocarbon emissions.

The Environmetal Protection Agency has also examined Maryland's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For [degreasing] operations, there are no specific constraints on nonreactive material that may be used, such as perchlorethylene or saturated hologenated hydrocarbons that are in use elsewhere. Comments are solicited on whether degreasing operations in the Metropolitan Baltimore Intrastate Region are a significant source of reactive hydrocarbon emissions for which a specific regulation should be promulgated.

Emissions of other solvents in the Metropolitan Baltimore Intrastate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb/day category) and spraying operations (40 to 200 lb/day category) involving organic solvents. Their estimated total peak-period emission is 0.10 ton or 0.47 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on premises of small firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. Other minor relaxations from L.A. Rule 66 involve evaporative emissions from gallon (or smaller) containers of architectural coating compounds and from the allowable disposal limits of waste solvent materials. No data are presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions, which are presently believed to be very small.

Even if the Administrator should determine that Maryland's existing regulations for control of solvent emissions as discussed above need not be augmented at this time, they will be the subject of continuing examination and their rigorous enforcement will be monitored.

Proposed Controls on Mobile Sources

In the plan addendum of June 28, 1973, it is stated that legislative authorization funding measures, etc., are needed to implement Maryland's proposed inspection and maintenance program. The tentative implementation timetable proposed by Maryland shows the commencing of the 20-month program on January 1, 1975, following an assumed passage of legislation, and completion by September 1, 1976. Under the requirements of the Clean Air Act, the States must proceed as expeditiously as

practicable to attain primary air quality standards. In an effort to ensure the earliest possible initiation of Maryland's inspection and maintenance program, the Administrator is proposing a regulation to require implementation of the system to begin by March 1, 1974, and actual commencement of the inspection program by August 1, 1975. The duration of this timetable is very close to that proposed by Maryland. The Maryland plan proposes an emission inspection program for all light- and heavy-duty gasoline-powered vehicles; a 12 percent hydrocarbon emission reduction and a 10 percent carbon monoxide emission reduction for all such vehicles is claimed through the use of a loaded-test inspection/maintenance program. These values are consistent with those presented in CFR Part 51, Appendix N. Both the Maryland and EPA proposals assume an initial 30 percent failure rate criterion. Comments are solicited on the desirability of establishing an initial 50 percent failure rate criterion, which calculations indicate would give an additional reduction of 0.1 ton of hydrocarbons per peak-period emission.

A full EPA review of the June 28, 1973, addendum is now in progress. This review will determine the degree of acceptability for both the establishment of the inspection and maintenance system itself and the subsequent inspection program. Comments are also solicited from the public and other interested parties on all aspects of the program. It is the Administrator's wish that the final promulgation incorporate as much of the Maryland-proposed program as can be found acceptable.

On June 15, 1973, and as subsequently amended on June 28, 1973, and on July 9, 1973, Maryland proposed retrofit of heavy-duty gasoline-powered vehicles with devices capable of reducing hydrocarbon and carbon monoxide emissions by 50 percent. EPA is unable to accept this proposal at this time because there has not been sufficient time for an adequate review of this proposal. Although a proposed implementation timetable has been included in Maryland's latest proposal, cooperative arrangements with jurisdictions proposing a heavy-duty

retrofit program have not been indicated. EPA, however, encourages Maryland's intended efforts in this direction.

EPA proposes retrofit of pre-1968 light-duty vehicles with approved Vacuum Spark Advance Disconnect (VSAD) devices and of certain 1968-1975 light-duty vehicles with oxidizing catalyst devices. The VSAD device is expected to reduce hydrocarbon emissions by 20 percent per vehicle and carbon monoxide emissions by 9 percent per vehicle. The oxidizing catalyst device is expected to reduce both hydrocarbon and carbon monoxide emissions by 50 percent per vehicle. Only those cars of 1968-1975 model years which run on gasoline with a research octane number (RON) of 91 can be fitted with this device because of technical constraints. In addition, this gasoline must be unleaded. Exemptions will be allowed for all 1975 model year vehicles originally equipped with the oxidizing catalytic converter, or those vehicles which are certified to meet the original statutory Federal emission standards for 1975. National estimates indicate that approximately 20 percent of the 1968-1970 model year vehicles and 75 percent of the 1971-1975 model year vehicles would be retrofitted under this proposal.

Summary of Effects

The estimated combined effect of the State transportation control measures approved by EPA and Federally proposed regulation are presented in the following table.

Federally proposed regulations are intended to strengthen, supplement, and expand, not wholly replace, State transportation control measures approved by EPA.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE METROPOLITAN BALTIMORE INTRASTATE AIR QUALITY CONTROL REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Year	Percent of Total Reduction Required	Tons per Peak Period (6-9 am)	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	103,000		13.4	
Expected Reduction:				
a) Current Regulations (1)	—5,575	—4.4%	1.5	6.5%
b) Gasoline Handling Vapor Recovery (2)	0	0	1.8	8.1%
c) Other Stationary Source (1) Rule Strengthening	500	0.4%	0.5	2.4%
Stationary Source Emissions Remaining	108,075		9.6	
Mobile Emissions from Highway Light- and Heavy-Duty Vehicles without Control Strategy (Credit taken for FMVCP)	242,100		26.3	
Expected Reduction:				
a) Inspection and Maintenance (2)	15,500	12.2%	2.1	9.4%
b) Mass Transit Improvements (2)	20,400	16.0%	1.8	8.1%
c) VSAD Retrofit pre-1968 LDV (3)	1,400	1.1%	0.3	1.3%
d) LDV Catalytic Retrofit 1968-1975 (3)	33,000	25.9%	2.9	12.9%
e) Gasoline Distribution Limitation (3)	103,200	81.1%	11.5	51.3%
Mobile Emissions Remaining	68,600		7.7	
Total Emissions without Strategy	345,100		39.7	
Total Reduction	168,425	132%	22.4	100%
Total Emissions Remaining	176,675		17.3	
Total Reduction Required	127,300		22.4	

(1) Approved State strategy.

(2) State strategies modified by EPA.

(3) EPA proposed strategy.

Implementation Procedures

Implementation of the strategies provided for by the regulations proposed herein is the key to the success of the air quality improvement program for the Metropolitan Baltimore Intrastate Region. Therefore, the proposed regulations also provide for the development of any necessary administrative procedures; schedules of compliance by sources; and surveillance, monitoring, and enforcement activities.

In all cases where VMT reduction measures are being proposed by regulations, the State or city will be required to take steps to accomplish the intended result. If this is not done, penalties for violation of the Clean Air Act may be assessed. It is EPA's position that it may re-

quire States or cities to enforce regulations that are related to their position as owners of roads. As owners of roads, States and cities may be held directly responsible for the pollution caused by those roads and by the traffic which the roads make possible, and they may be required to take such steps as are necessary to ensure that the roads and the activities carried out on them cease to cause violations of air quality standards. Regulations have accordingly been drafted to impose enforcement responsibility on the States or cities only where the activity being regulated was, in the judgment of EPA, closely enough related to the government's position as owner of the roads to justify the imposition of responsibility under this theory.

Economic and Social Impact

The social and economic consequences of the majority of the measures included in the Maryland plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Distributed costs of the various Maryland proposed mass transportation and fuel-handling improvement measures, as well as those supplemental strategies proposed by EPA providing incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable. In addition, these measures are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and a decrease in energy consumption.

On the other hand, while the collective benefits to be derived from the catalytic converter retrofit program are significant, the average price to the individual motorist is $135 per vehicle. However, the cost of this proposal could be ameliorated by the imposition of a state financed

retrofit program which would spread the cost over the entire vehicle population. Such a program might be financed through a gasoline tax or vehicle registration fee.

The most stringent proposal would require in 1977 a gasoline sales reduction of 59.5 percent from base year levels. This would affect nearly every economic and social activity in the Metropolitan Baltimore Intrastate Region. It is not possible at this time to calculate the economic and social cost to the community of this proposal. However, it must be recognized that under the requirements of the Clean Air Act, the Administrator must help provide for attainment of air quality standards as expeditiously as practicable. It is for this reason that the Administrator solicits suggestions on all possible measures which will ease the burden of the more severe strategies considered. The Administrator recognizes that there are significant positive aspects to VMT reductions. These VMT reductions may well lessen the need for currently envisioned urban interstate highways. Many experts believe that the sprawling development patterns fostered by widespread automobile use are unduly wasteful of energy, land, and other resources, and have contributed to the decay of urban centers. Widespread use of other modes of transportation will be necessary if these adverse tendencies are to be corrected.

Greater use of mass transit and car pooling may well stimulate the switch to a 4-day week by major industries. This, in turn, may result in further reductions in VMT and/or total emissions, at least in the CBD. Gasoline limitation measures would stimulate the need for additional mass transit and/or car pooling, thus resulting in further reductions of the total emissions.

In summary, the Agency has responded to the order of the United States Court of Appeals for the District of Columbia Circuit and proposes a plan to attain and maintain air quality standards in the Metropolitan Baltimore Intrastate Region by May 31, 1977. In this proposed plan for attainment of standards by May 31, 1977, the Agency proposes to grant the maximum extension allowed by law. Even with this extension, the plan would

result in social and economic consequences which must be considered severe. The public hearing scheduled on these proposals should focus not only on the reasonableness or unreasonableness of the proposed plan, but also on what steps can be taken to clean up the air and maintain air quality standards beyond 1977.

Mass Transportation

Improvements and expansion of the existing mass transportation facilities in the Baltimore Metropolitan area (the so-called Baltimore Metropolitan Area Transportation Study—BMATS) are integral to the proposed reduction in VMT obtained as a result of disincentives and restraints on the personal use of automobiles primarily within the BMATS area.

Since mid-1971, all transit functions in Baltimore City have been the responsibility of the Mass Transit Administration (MTA) of the Maryland Department of Transportation. The Baltimore Transit Company had been purchased in 1970 by the predecessor agency, the Metropolitan Transit Authority. MTA is responsible for planning, programming and implementing mass transit services in the Metropolitan Transit District, which is comprised of Baltimore City, Baltimore County, and Anne Arundel County. MTA has taken over four suburban transit companies. Thus, the entire metropolitan transit system is State owned and operated.

In addition to bus transit, MTA is planning and developing a regional rail rapid transit system in coordination with the Regional Planning Council. The Urban Mass Transportation Administration (UMTA) has recently granted $22.5 million to help finance construction of the first phase of the system. The local one-third of funds will come from the Maryland Department of Transportation.

There are few apparent legal or institutional obstacles to improved transit services, or even reduced transit fares at the State level. Local policy is one of support for public transit. There is a question of economic policy,

however, related to the mandate of MTA to support all costs incurred for construction, acquisition, operation, and maintenance of transit facilities "as far as practicable" from the fare box and Federal funding grants. Presently no funds are available from Federal sources to subsidize operating losses; therefore, it would be necessary for the State to review policy related to operating losses caused by new services or reduced fares.

Present planning calls for many transit service improvements, including acquisition of at least 100 new buses in 1973. An application to UMTA to support this plan was submitted in January. The transit technical study (T9-5) is in the review stages, but it may be expected to recommend further service improvements.

Expanded mass transit facilities are essential to the success of any air pollution control strategy for the Metropolitan Baltimore area. The Administrator, therefore, encourages transit expansion in this area, and he will provide all possible support to efforts by Federal, State, local governmental, and private groups to expand the mass transit facilities.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Metropolitan Baltimore Intrastate Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control measures to implement these measures and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held in Baltimore on September 5, 1973, at 10:00 a.m. in the Carroll Room, Baltimore Hilton Hotel, 101 West Fayette Street. Further notice of these hearings, including locations where EPA proposals can be inspected, will be published in the Baltimore area.

The Administrator's final promulgation of transportation controls for the Metropolitan Baltimore area will consider the comments and testimony he receives, as well as any additional approvable strategies submitted by the State before or at the hearing as part of the State plan. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in significant ways from this proposal.

Submittal of Written Comments

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Regional Administrator, EPA Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. All relevant comments received not later than September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the EPA Region III Office, and at locations to be announced in the Baltimore area. This notice of proposed rule making is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq.).

EPA Studies and Guidelines

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

1. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study."
2. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.) The documents listed in 1 and 2 above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.
3. "Control Strategies for In-Use Vehicles," November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.
4. "Transportation Control Measures," *Federal Register* (38 FR 15194), June 8, 1973.
5. "Transportation Controls to Reduce Motor Vehicle Emissions in Baltimore, Maryland," APTD-1443 (December 1972), available from EPA, Office of Air and Water Programs, Research Triangle Park, North Carolina 27711.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

Robert W. Fri,
Acting Administrator.

It is proposed to amend Part 52 of Chapter 1 of Title 40 of the Code of Federal Regulations by adding the following:

Subpart V—Maryland

§ 52.1085 Inspection and maintenance.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicle by identifying vehicles which need emission-control-related maintenance and requiring that maintenance be performed.

(2) "Precontrolled vehicles" means light-duty vehicles sold nationally (except California) prior to the 1968 model year and light-duty vehicles sold in California prior to the 1966 model year.

(3) "Controlled vehicles" means light-duty vehicles sold nationally (except California) in the 1968 model year and later and light-duty vehicles sold in California in the 1966 model year and later.

(4) "Loaded emissions test" means a sampling procedure for exhaust emissions which requires testing the engine under stress (i.e., loading) by use of a chassis dynamometer to simulate actual driving conditions. As a minimum requirement, the loaded emission test must include running the vehicle and measuring exhaust emissions at two speeds and loads other than idle.

(5) "Idle emission test" means a sampling procedure for exhaust emissions which requires operation of the engine in the idle mode only. At a minimum, the idle test must consist of the following procedures carried out on a fully warmed-up engine: a verification that the idle RPM is within manufacturer's specified limits and a measurement of the exhaust carbon monoxide and/or hydrocarbon concentrations during the period of time from 15 to 25 seconds after the engine was used to move the car or was run at 2000 to 2500 RPM with no load for 2 to 3 seconds.

(6) "Retrofit" means the addition or removal of an item of equipment, or a required adjustment, connection, or disconnection of an existing item of equipment, for the purpose of reducing emissions.

(7) "Idle adjustment" means a series of adjustments which include RPM, idle air/fuel ratio and basic timing.

(8) "Initial failure rate" means the percentage of vehicles rejected because of excessive emissions of a single pollutant during the first inspection cycle of an inspection/maintenance program. (If inspection is conducted for more than one pollutant, the total failure rate may be higher than the failure rates for each single pollutant.)

(b) This regulation is applicable within the geographical confines of the State of Maryland.

(c) The State of Maryland shall submit to the Administrator of EPA or his designee, no later than January 1, 1974, a detailed compliance schedule showing the steps that will be taken to establish and enforce an inspection and maintenance program pursuant to paragraph (d) of this section.

The compliance schedule shall include:

(1) The text of any necessary statutory proposals and regulations that are needed to carry out the inspection/maintenance system.

(2) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of the needed legislation to the legislature and to ensure timely adoption of the regulations needed for paragraph (d) of this section.

(3) A detailed timetable describing the dates of ordering and of acquisition of necessary equipment.

(4) A signed statement by the chief executive or his designee identifying the sources and amounts of funding for the inspection/maintenance program and a timetable to ensure that proper funding levels are available. If funds cannot legally be obligated under existing statutory authority, the text of the needed legislation shall be submitted to the Administrator of the Environmental Protection Agency or his designee pursuant to paragraph (c) (1) of this section.

(d) The State of Maryland shall establish an inspection and maintenance program applicable to all light-duty gasoline-powered vehicles registered within its confines. No later than March 1, 1974, the State of Maryland shall submit to the Environmental Protection Agency

legally adopted regulations establishing such a program. The regulations shall include:

(1) Provisions for the inspection of all gasoline-powered light-duty vehicles at periodic intervals of no more than one year by means of a loaded (dynamometer) test.

(2) Provisions for inspection failure criteria consistent with the emission reduction claimed in the plan for the strategy. These criteria shall include an initial failure rate of 30 percent (see definitions).

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Delineation of the agency or agencies responsible for conducting, overseeing and enforcing the inspection and maintenance program.

(6) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(e) After July 31, 1976, the State of Maryland shall not register nor allow to operate on its streets or highways vehicles which fall within this regulation and have not complied with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) After July 31, 1976, no owner of a vehicle which is affected by this regulation shall operate or allow to be operated a vehicle which does not comply with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

§ 52.1086 Bus/carpool computer matching system.

(a) Definitions:

(1) "Bus/carpool matching" means assembling lists of commuters sharing similar travel needs. The number of commuters on each list identifies potential bus/carpools.

(2) "Time-origin-destination (TOD) information" means information that identifies a commuter's work schedule, home and work location.

(3) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region (hereafter referred to as the Region).

(c) Beginning March 1, 1974, the State of Maryland shall establish a computer-aided bus/carpool matching system which is conveniently available to all employees in businesses having more than 10 employees within the Region who operate light-duty vehicles on streets or highways over which it has ownership or control. No later than December 1, 1973, the State shall submit legally adopted regulations to the EPA establishing such a system. The regulations shall include:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each affected employee to receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application for applicant identification of time, origin, and destination, and the applicant's desire to drive only, ride only, or share driving.

(2) A computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and suburban region surrounding it and matching ap-

plicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service such that the master list of all applicants is retained and available for use by new applicants; applications are currently available; and the master list is periodically updated to remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating, overseeing and maintaining the bus/carpool computer matching system.

(d) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act.

§ 52.1087 Management of parking supply.

(a) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land for use as a facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot, or portion thereof used primarily for temporary storage of motor vehicles.

(b) This regulation is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) No person, after August 15, 1973, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he

has first received from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification, or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a condition that before a permit may be issued the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the proposed facility will serve.

(v) The number of motor vehicles using the proposed facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include but not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of vehicle miles of

travel within any area the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement, or modification of a facilty covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of 40 CFR 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. If notice of intent to participate is required, that fact shall be noted prominently in the required notice of hearing.

§ 52.1088 Limitation of public parking.

(a) The term "on-street parking" means leaving a vehicle on a street or sidewalk and also includes stopping for any purpose other than the momentary and immediate pickup or discharge of passengers. A prohibition of "on-street parking" under this section includes a prohibition against stopping for the purpose of effecting any delivery of goods.

(b) The following provisions apply to all areas within the City of Baltimore and the counties of Baltimore, Howard, and Anne Arundel, which are in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) On-street parking limitations:

(1) Beginning January 1, 1974, the City of Baltimore and all municipalities in the counties described above shall prohibit on-street parking, Monday through Saturday, on all streets and highways over which they have ownership or control and which contain express bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked

in violation of the prohibition shall be towed away, or the owner shall be subject to a fine of up to $100 per violation, or both, depending on the circumstances of the violation.

(2) Beginning January 1, 1974, the counties of Baltimore, Howard, and Anne Arundel shall prohibit on-street parking, Monday through Saturday, on all streets and highways over which they have ownership or control and which contain bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked in violation shall be towed away, or the owner shall be subject to a fine of up to $100 per violation, or both, depending on the circumstances of the violation.

(3) Beginning on January 1, 1974, the State of Maryland shall prohibit on-street parking, Monday through Saturday, on streets and highways over which it has ownership or control and which contain express bus/carpool lanes. The prohibition against "on-street parking" on any particular street or highway shall be only for the period during which the particular street or highway has a lane or lanes reserved for buses, carpools, or buses and carpools. The prohibition shall state that vehicles parked in violation of the prohibition shall be towed away, or the owner shall be subject to a fine of up to $100 for violation, or both, depending on the circumstances of the violation.

(d) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan, and subject to enforcement under section 113 of the Clean Air Act.

§ 52.1089 Preferential bus/carpool treatment.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a lane or a street or highway open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "CBD" is defined as the area bounded by Centre Street, Fallsway, Falls Avenue, Pratt Street, Greene Street, Franklin Street and Eutaw Street in Baltimore City.

(4) "Major street or highway" means any street or highway which meets the criteria given in paragraphs (b) (4) (ii) and (iii) of this section.

(b) The following provisions apply to all areas within the City of Baltimore and the counties of Baltimore, Howard, and Anne Arundel.

(1) The City of Baltimore and all municipalities in counties described above shall establish bus carpool lanes on the major streets and highways over which they have ownership or control according to the schedule in paragraph (b) (4) (v) of this section.

(2) Baltimore, Howard, and Anne Arundel counties shall establish bus/carpool lanes on the major streets and highways over which they have ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(3) The State of Maryland shall establish bus/carpool lanes on the major streets and highways over which it has ownership or control, according to the schedule in paragraph (b) (4) (v) of this section.

(4) Each of the governmental entities named in the previous three subparagraphs of this paragraph shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps which it will take to establish these bus/carpool lanes and to enforce the limitations on their use, with each schedule to include the following:

(i) Each street and highway which will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(ii) If a street or highway has four or more traffic lanes in one direction, at least one of these lanes must

be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iii) If a street or highway has three lanes in one direction, at least one of these lanes must be open only to buses (or buses and carpools) from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m.

(iv) In unusual situations, a street or highway, or segment thereof, may be exempt from these requirements if an approval of the exemption is obtained from the Administrator. The application for exemption shall not be submitted and will not accepted after November 15, 1973. Special circumstances justifying the need for an exemption (such as inappropriateness of use by buses, designation of bicycle lanes instead, or desire to allow bus/carpool lanes to be entered briefly by other vehicles for the purpose of crossing a lane or making a right turn) must be given in detail with the application.

(v) Bus/carpool lanes must be prominently indicated by overhead signs at least once every mile, and at each intersection or entry ramp. Of the lane mileage for each of the governmental entities, 25 percent must be established and needed signs must be installed by March 1, 1974; 50 percent by June 1, 1974; and 75 percent by September 1, 1974; and 100 percent by December 1, 1974.

(vi) Bus/carpool lanes must be prominently indicated by distinctive painted lines pylons, or physical barriers.

(vii) Between 7:00 a.m. and 6:30 p.m., the right two lanes of each one-way street in the CBD having four or more lanes shall be bus/carpool lanes.

(viii) Between 7:00 a.m. and 6:30 p.m., the right lanes of each one-way street in the CBD having three lanes shall be a bus/carpool lane.

(ix) In unusual situations, the requirements of paragraph (b) (4) (iv) of this section shall apply.

(5) Buses shall have the right-of-way whenever changing lanes on streets and highways with bus lanes. This shall take effect as each lane is established and identified.

(6) Buses shall be permitted to make left turns whether or not the intersection is posted for "No Left

Turn" (except when a one-way street would be entered from the wrong direction). This shall take effect January 1, 1974.

(7) None of the governmental entities named in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall convert existing on-street parking spaces to traffic lanes unless the effect will be to increase the number of bus/carpool lanes on the affected street beyond the number otherwise required by paragraph (b) of this section or unless the effect will be to create a bicycle lane in place of the parking spaces. Exemptions from the requirements of this paragraph (b)(7) of this section may be sought by application in the manner and subject to the requirements provided for by paragraph (b)(4)(iv) of this section. Requests for exceptions pursuant to this subparagraph along streets or highways on which existing parking lanes will be automatically eliminated by the institution of parking limitations pursuant to § 52.1088 of this Chapter shall be submitted to the EPA no later than November 15, 1973. In all other cases, requests for exceptions must be made and approved before a parking lane can be converted to a traffic lane other than bicycle or bus/carpool lanes.

(8) A signed statement by the chief executive of each governmental entity or his designee shall be submitted to the EPA on January 1, 1974, to identify the sources and amount of funds for all projects.

(c) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State of other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1090 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automobile fuel tank from gasoline-dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.1091 (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result o fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks on vehicles existing at the time of promulgation of this regulation.

(g) The State of Maryland shall divide all facilities subject to this section into two classes, each of which taken as a whole emit approximately equal amounts of hydrocarbon materials. The classes shall be known as Class I and Class II.

(h) Except as provided in paragraph (j) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1975.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of onsite construction or installation of emission control equipment or process change must begin not later than July 31, 1975.

(3) Onsite construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall

certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) Paragraphs (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by November 15, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by November 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(k) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this Chapter.

§ 52.1091 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the at-

mosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(d) The provisions of paragraph (c) of this section shall not apply to the transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) *Compliance schedule.* Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the

Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of onsite construction or installation of emission control equipment or process modification; completion of onsite construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.1092 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, certain gasoline-powered light-duty motor vehicles of model years 1968 through 1975, which are or would be subject under presently existing legal requirements to registra-

tion in the area defined in paragraph (b) of this section, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c)(3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of Maryland shall commence retrofitting oxidizing catalysts to those light-duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the known needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways any light-duty gasoline-powered vehicle which does not comply with the applicable standards, procedures, and regulations adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle which does not comply with the applicable standards, procedures and regulations implementing this section.

(f) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. A State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1093 Vaccum spark advance disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light-duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the State will evaluate and approve devices for use in this program. Such date shall be not later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e) (2) of this section enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the Metropolitan Baltimore Intrastate Air Quality Control Region:

(1) The State shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light-duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, a State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1094 Gasoline limitation.

(a) Definitions:

(1) "Base year" means the consecutive twelve month period commencing on July 1, 1972, and ending June 30, 1973.

(2) "Distributor" means any corporation, partnership, or sole proprietorship which transports or stores or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(3) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public or introduced into any vehicle.

(b) This section is applicable in the Metropolitan Baltimore Intrastate Air Quality Control Region to all distributors who transport gasoline to any retail outlet in this area, and to the owners of retail outlets in this area.

(c) Beginning July 1, 1974, the State of Maryland shall implement regulations limiting the total gallonage of gasoline delivered to retail outlets in the area described in paragraph (b) of this section to the amount delivered to such outlets during the base year. Beginning May 31, 1977, the State of Maryland shall implement regulations limiting the total gallonage delivered to retail outlets to that amount which, when combusted, will not result in the ambient air quality standard being exceeded. The State shall by January 1, 1977, submit to the Administrator regulations to accomplish this limitation and specifying the amount of limitation necessary.

(d) In order for the State to determine the amount of gasoline delivered during the base year and each year in which control is in effect, all distributors to which this section applies shall provide the State with a detailed accounting of the amount of gasoline delivered to each retail outlet in the areas described in paragraph (b) of this section during the base year, and the years during which control is in effect. For the year during which control is in effect, the owner of each retail outlet to which this paragraph applies shall provide the

State with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and the end of the year. The State may require any other reports it may deem necessary for the implementation of this section.

(e) The State of Maryland shall submit no later than January 1, 1974, a detailed compliance schedule showing steps it will take to establish and enforce the limitation program specified in paragraph (c) and (d) of this section including the next of needed statutory proposals and needed regulations which it will propose for adoption. Each schedule shall also include the following:

(1) A date by which the State shall adopt procedures to ensure that no more than the amount of gasoline specified in paragraph (c) of this section is delivered to retail outlets in the areas affected. Such date shall be no later than March 30, 1974.

(2) A date by which any report necessary for establishing such procedures shall be furnished to the State by the distributors. Such a date shall be no later than January 1, 1974.

(3) Any agency responsible for implementation and monitoring of this program.

(f) Failure to comply with any provision of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the Clean Air Act. A state will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

[FR Doc. 73-15627 Filed 8-1-73; 8:45 am]

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[40 CFR Part 52]

MARYLAND; (PRINCE GEORGES AND MONTGOMERY COUNTIES) APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the State of Maryland for attainment of the primary National Ambient Air Quality Standards for carbon monoxide (CO) and photochemical oxidants for the Maryland portion of the National Capital Interstate Region was disapproved in part on June 15, 1973, (38 FR 16558). This notice of proposed rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the Maryland plan to attain and maintain the National standards for carbon monoxide and photochemical oxidants in the Maryland portion of the National Capital Interstate Region.

If revisions to the Maryland plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the Maryland plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the Maryland portion of the National Capital Interstate Region by a Regional plan carried out by the State or its designated representative.

Transportation Control Alteratives

Analysis of the air quality problems in the National Capital Interstate Region, which contains Prince George's and Montgomery Counties in Maryland, reveals that both photochemical oxidants and carbon monoxide exhibit un-

acceptably high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producting hydrocarbon emissions stem from the vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs, and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, and/or limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicle, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day week, programs promoting the use of carpools or alternative modes of transportation and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted for the Region by the State of Maryland must be reflected by identical or equivalent measures in each of the neighboring jurisdictions of Virginia, and the District of Columbia.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective complement facilitating use of this alternative to the private automobile. Clearly public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

SUMMARY

The Maryland plan, as amended by the June 15, 1973, June 22, 19[illegible], and June 28, 1973, submissions in its demonstration of attainment of the photochemical oxidant and carbon monoxide air quality standards utilizes the following general measures. These are: the Federal Motor Vehicle Emission Control Program, a state-wide, state-run Motor Vehicle Inspection Program for all gasoline powered vehicles, improvements to public transportation, increased parking charges, bus/carpool locator, retrofit of heavy duty gasoline powered vehicles, restrictions on aircraft ground operations, and major stationary source restrictions. As aforementioned, it is EPA's intent to use the state submitted strategy to the greatest extent possible.

The Maryland plan reports that, in 1972, peak period hydrocarbon emissions were 30.1 tons (47.6 percent of the total Regional Peak emissions) and carbon monoxide emissions were 286,725 tons per year. Although these figures are only for Prince George's and Montgomery counties (i.e., the Maryland portion of the National Capital AQCR), they are reflected in the overall strategy developed by the Metropolitan Washington Council of Government (COG). The state of Maryland's corrected calculations indicate that hydrocarbon emissions in Maryland in the peak period must be reduced by 65 percent of the 1972 emissions to a level of 10.5 tons. Similarly, carbon monoxide emissions must be reduced by 55 percent of the 1972 levels to an annual level of 129,026 tons.

After including projected increases in vehicle miles of travel, the Federal Motor Vehicle Control Program will reduce hydrocarbon peak period emissions by 15.1 tons or by approximately 50 percent relative to the 1972 base period. Similarly, the impact on carbon monoxide levels will be to reduce emissions in Maryland by 145,000 tons yearly or by 51 percent relative to the 1972 base period.

These estimates are adjusted to reflect the effect of the 1975 interim motor vehicle emission standards announced on April 11, 1973.

Since the 21-day period for public comment on the additional submissions has not been completed, it is impossible for the Administrator to make a final decision on approval or disapproval of the strategies included in the Maryland plan at this time. This decision must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable, additional measures will be proposed.

The information contained in the additional submissions by the State appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the Maryland Plan.

Federal Motor Vehicle Control Program—Reductions appear to be approvable based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—The basic program appears to be approvable in concept but lack of legal authority delays timely implementation of the plan. Therefore, it does not appear to be approvable. The Administrator will propose the same program, but with an acceptable implementation schedule.

Improvements in Public Transit

(a) Maryland participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling) appears to be approvable.

Increased Terminal Charges

(a) Elimination of free off-street, employee parking in certain areas—does not appear to be approvable.

(b) Street enforcement of current on-street parking restrictions—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—appears to be approvable.

Restrictions on aircraft ground operations—partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—not approvable at this time due to lack of adopted regulations.

Heavy Duty Restraints—does not appear to be approvable because of lack of documented technical feasibility.

Due to the fact that:

Full reductions claimed for aircraft emissions do not appear to be allowable;

The plan did not include adequate controls for heavy duty gasoline powered vehicles.

The portion of the plan dealing with elimination of free off-street employee parking does not appear to be approvable.

The controls over stationary sources cannot be approved at this time.

EPA is proposing the following measures:

Initiation of commercial-type parking rates or reduction of 12% the available spaces at any federal, state, or local facility which has 25 or more parking spaces and which is located in a high density employment area which is well serviced by public transit.

Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

Retrofit of light duty 1971-1975 fleet vehicles (including federal government vehicles) and taxicabs with an oxidizing catalyst retrofit—beginning in mid-1976, to be completed by mid-1977.

Controls of emissions of hydrocarbons due to gasoline handling; both from the delivery truck to underground tank and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

Ban of heavy-duty-gasoline-powered vehicles (except emergency vehicles, mail trucks, etc.) from 6:00 a.m. to 9:30 a.m. beginning July 1, 1974.

Finally, since the $2.00 surcharge proposed by Maryland is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

Two-Year Extensions to Achieve Standards

The Administrator proposes to give a two-year extension for the attainment of the standard in the State of Maryland. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available" within the meaning of section 110(e) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals (such as gasoline limitations and a selective vehicle exclusion program involving colored tags) the reduction in vehicle miles traveled expected from meas-

ures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the State of Maryland, apply the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

SUMMARY OF EFFECTS

The following table is a summary of the effect of the proposed strategies on the total reductions required.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE NATIONAL CAPITAL INTERSTATE REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per peak period	Percent of total Reduction Required	Tons per peak period	Percent of total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expect Reduction From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Stationary Source Rule Strengthening	0	0	0	
Stationary Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicle without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.6
(f) Aircraft Model Program	11.0	14.6	0.8	6.4
Mobile Emissions Remaining	405		12.7	
Total Emissions without Strategy	576		33.6	
Total Reductions	93	123.9	12.7	100.2
Total Emissions Remaining	483		20.9	

Proposed Controls on Stationary Sources

One of the major sources of hydrocarbon emissions, which have been identified in the Maryland plan for the Maryland portion of the National Capital Interstate Region, is the gas handling losses which occur in the dis-

tribution system for gasoline fuel. The Maryland plan proposes control of these emissions.

The regulations proposed by the State of Maryland for control of hydrocarbon emissions at retail service stations or fleet-owned service stations requires installation of a vapor balance line or equally effective vapor discharge control system. This regulation requires controls to be installed on all stations with a monthly average throughput exceeding 35,000 gallons by May 31, 1975, and at all other stations by May 31, 1977. Vapor collecting systems which must be installed on vehicle fuel tank filling systems are to be installed concurrent with the vapor balance line connections specified above.

The regulations as proposed by the State of Maryland appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR part 51 requires that all regulations dealing with the control of stationary sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent acceptable regulations as adopted by the State of Maryland.

Existing organic solvent regulations require that all present dry cleaning installations emitting more than 200 pounds per day of photochemically reactive hydrocarbons shall reduce present emissions by at least 85 percent, and that the limit for new installations shall be 40 pounds per day. In its plan the state has proposed a requirement that all dry cleaning establishments refrain from using any photochemically reactive organic solvents after May 31, 1974. This would result in a reduction of 0.03 tons per peak period, or 0.14 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. The Administrator is aware of Maryland's on-going program for the control of hydrocarbon emissions from dry cleaning installations and is presently evaluating the proposed regulation which would accelerate the program by attaining full compliance by the proposed May 31, 1974 date.

The regulations as proposed by the State of Maryland appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR part 51 requires that all regulations dealing with the control of Stationary Sources be adopted at the time of submittal of the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent acceptable regulations as adopted by the State of Maryland.

The Environmental Protection Agency has also examined Maryland's regulations governing emissions of organic solvents resulting from degreasing operations and from evaporation from surface and architectural coatings. For degreasing operations, there are no specific constraints on non-reactive material that may be used such as perchlorethylene or saturated halogenated hydrocarbons that are in use elsewhere. Comments are solicited on whether degreasing operations in the Maryland portion of the National Capital Interstate Region are a significant source of reactive hydrocarbon emissions for which a specific regulation should be promulgated.

Emissions of other solvents in the Maryland portion of the National Capital Interstate Region were also investigated. It has been determined that technology does exist to control more efficiently the emissions of a number of the smaller heating (15 to 200 lb per day category) and spraying operations (in the 40 to 200 lb per day category) involving organic solvents. Their estimated total peak period emissions is 0.10 tons or 0.47 percent of the reduction required to meet the primary ambient air quality standards by May 31, 1977. Comments are solicited as to whether it is feasible or practicable to require additional controls on these sources, many of which are presumably located on the premises of small sized firms. If these comments indicate that further controls are needed, then the Administrator proposes to promulgate regulations equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66. L.A. Rule 66 contains minor exemptions involv-

ing evaporative emissions from gallon (or smaller) sized containers of architectural coating compounds, and from the allowable disposal limits of waste solvent materials. There are no data presently available to the Administrator on the atmospheric burden that may be created by such evaporative emissions though they are presently believed to be very small.

Proposed Controls on Mobile Sources

(non-aircraft)

In the plan addendum of June 28, 1973, it is stated that legislative authorization funding measures, etc., are needed to implement Maryland's proposed inspection and maintenance program. The tentative implementation timetable proposed by Maryland shows the commencing of the 20-month program on January 1, 1975, following an assumed passage of legislation, and completion by September 1, 1976. Under the requirement of the Clean Air Act, the States must proceed as expeditiously as practicable to attain primary air quality standards. Because of the delay in geting legal authority, Maryland's program would not be implemented as expeditiously as possible. In an effort to ensure the earliest possible initiation of Maryland's program, the Administrator is proposing a regulation which will permit implementation of the system to begin on March 1, 1974, and permit actual commencement of the inspection program by August 1, 1975.

The Maryland plan proposes an emissions inspection program for all light and heavy duty gasoline powered vehicles with an initial failure rate of 30 percent. As recommended in Appendum [sic] N of 40 CFR, Part 51, a 12 percent hydrocarbon emission reduction and a 10 percent carbon monoxide emission reduction for all such vehicles is claimed through the use of a loaded test inspection/maintenance program. Comments are solicited on the desirability to establish an initial 50 percent failure rate criterion which calculations indicate would result in an

additional reduction of 0.1 tons hydrocarbon peak period emission.

A full EPA review of the June 28, 1973, addendum is now in progress. This review will determine the degree of acceptability for both the establishment of the inspection and maintenance system itself and the subsequent inspection program. Comments are also solicited from the public and other interested parties on all aspects of the program. It is the Administrator's intent that the final promulgation incorporate as much of the Maryland proposed program as can be found acceptable.

Since the Clean Air Act requires consideration of all reasonably available alternatives, in order to attain the primary standard as expeditiously as practicable, EPA proposes retrofit of pre-1968 light duty vehicles with approved Vacuum Spark Advance Disconnect (VSAD) devices and 1971-1975 light duty fleet vehicles with oxidizing catalyst devices. The VSAD device is expected to reduce hydrocarbon emissions by 25 percent per vehicle and carbon monoxide emissions by 9 percent per vehicle. The oxidizing catalyst device is expected to reduce both hydrocarbon and carbon monoxide emissions by 50 percent per vehicle. Only those cars of 1971-1975 model years which run on gasoline with a R.O.N. of 91 can be fitted with this device because of technical constraints. In addition this gasoline must be unleaded. National estimates indicate that approximately 75 percent of the 1971-1975 model year vehicles would be retrofitted under this proposal. Since catalytic retrofit devices for light-duty vehicles are expected to be available by 1977, it is proposed to require installation of these devices on all 1971-1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline.

The regulation proposed by the Administrator will require that the above motor vehicles be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50 percent hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidation catalytic converter

or those vehicles which are certified to meet the original statutory emission standards in 1975. Based on inspection currently available to him, the Administrator estimates that fleet vehicles account for 6 percent of total mobile source emissions. On the basis that one-third of the fleet vehicles will be older than two years (pre 1976), and catalytic retrofits can reduce automotive emissions from each vehicle by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, including catalytic retrofit of other segments of 1968-1975 light duty vehicle population. Candidate segments include all light duty trucks, all GSA cars, or passenger vehicles of specified model years. The public is urged to present their comments on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

Proposed Reductions in VMT

According to data provided by the Metropolitan Washington Council of Governments, the proposed transportation package (including 750 additional buses, exclusive bus/carpool lanes, a carpool locator service, and parking restrictions) will result in a 12 percent reduction in 6-9 am VMT and a corresponding reduction in total trips.

The Maryland plan includes the following strategies under its transportation measures:

1. Participation with District of Columbia and Commonwealth of Virginia in an area wide improved transit system, including the addition of 750 buses to the current area fleet, the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.
2. Increased terminal costs including the elimination of free parking and the establishment of a $2.00 parking surcharge for long term commuter parking in all areas adequately served by mass transit.
3. Establishment of a computerized carpool locater service.

This portion of the plan is central to the Maryland plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. *Elimination of Free Parking*—The State of Maryland proposes to have EPA eliminate free parking for the federal government employees, and to study the feasibility for similar action by the state for employees of state and local government and private businesses. The plan also includes a program of strict enforcement of existing parking regulations.

These measures will be imposed in high density employment areas which are adequately served by mass transit. These areas will be more specifically described by the state within the next 10 months, upon completion of studies of the matter.

Additionally, Maryland proposes to enter into a reciprocal enforcement program for parking violations. Thus, enforcement of the existing parking regulations will be facilitated.

On the basis of the information submitted by Maryland in its plan, the Administrator feels that the portions of the Maryland plan dealing with enforcement of existing parking restrictions and the reciprocal enforcement of parking violations is approvable.

As pointed out in Maryland's plan, reduction of emissions due to work trips within the Maryland portion of the AQCR by Federal Government employees is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid Maryland in the control of these emissions. As a result, EPA will follow the suggestion made in the Maryland plan and propose a federal regulation which would effectively reduce emissions as a result of commuter trips by federal employees. This will be done by requiring federal facilities in high density areas

served by mass transit to either eliminate free parking (by establishing commercial type rates) or to reduce the available parking spaces in these facilities by 12 percent.

Since the other jurisdictions in the AQCR has also proposed to eliminate free parking for employees of their government and the Maryland plan is unclear on this point, EPA is also proposing that the specific state and local governmental parking facilities eliminate free parking (or adopt an equivalent measure). Specifically the proposal calls for the elimination of free parking or the reduction of available space by 12 percent for all state and local government parking facilities which have 25 or more spaces and which are located in high density employment areas which are served by public transportation. Since the plan is regional in nature, this action is necessary to insure that the reductions achievable by this measure throughout the AQCR do in fact occur. The Administrator feels that the result of this proposal will be to induce employees to utilize alternate modes of transportation, such as buses and carpools and thereby reduce the VMT in the area. It should be noted that this proposal should result in a reduction of VMT over the entire area because it will reduce VMT of employees from all three jurisdictions in the National Capital Area.

The Friendship Heights Area, the Silver Spring Area, and the Rockville Area, along with other areas, in all likelihood would need to be included in any definition of "high density employment area which is served by mass transit" for this strategy to be effective.

b. *$2.00 Surcharge (or its equivalent)*

The Maryland plan proposes to seek the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long term parking facilities in employment areas which are served by mass transit. Identification of the areas where the surcharge is to be imposed should be made within the next 10 months, upon completion of studies of matter.

This proposal calls for the charge to be implemented and enforced by the local jurisdictions within the Maryland portion of the AQCR. The Administrator feels that,

if implemented according to the schedule provided in the plan, this proposal is approvable.

It is well documented that no matter how well designed and operated a mass transit system is, unless there are disincentives to the use of the private automobile, mass transit will be ineffective. Therefore, Maryland's proposals for the surcharge is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not implemented according to schedule, he will institute equivalent measures. In order to avoid any delay in the implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the plan. These contingency measures will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15 percent reduction in existing off-street parking spaces would be imposed, as well as a ban on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator. Public comments are solicited on these contingency proposals.

c. *Mass Transit Improvements.* The development of an effective mass transit system is essential to the development of an effective transportation control strategy. If this control plan is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided.

The Maryland plan proposes to participate in the area wide transit system increase of current fleet size by 750 buses and to improve service and convenience for commuters. Included in this proposal are provisions for installing bus shelters, providing additional public information and improved scheduling. In addition, Maryland plans to institute a number of exclusive bus lanes on major highway corridors. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the documents submitted by Maryland, the Administrator feels that the

proposals for increased mass transit are approvable, on the condition that certain administrative details will be provided to him by the State. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on the schedule showing the projected incremental increases in fleet size should be provided. In addition, the Maryland plan does not specifically indicate that Maryland will expend funds for the necessary purchase of new buses. Since Maryland is a signator of the WMATA compact, this commitment can be assumed. A direct declaration by Maryland shoud be made, though.

d. *Bus/Car Pool Locator System.* The Maryland plan recognizes the need for more efficient utilization of current automobile usage. Thus, the plan proposes a voluntary bus/car pool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, work locations, and will be phased in starting with pilot projects during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable, and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this system also has the advantages of fuel conservation and it will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. *Heavy duty vehicle restraints.* In addition to the transportation measures described above, the Maryland plan addresses the problem of heavy duty gasoline powered vehicle emissions. The plan discusses emission control retrofit program for heavy duty gasoline powered vehicles. The discussion provided indicates the need to achieve a 50 percent reduction in emissions from such vehicles to meet the standards by 1977. Such reduction would be complimentary to the approvable heavy duty

emission controls measures included in the District of Columbia plan and the concepts discussed in the Virginia plan.

The Maryland plan specifically proposes a heavy duty retrofit strategy to be implemented by 1977. Currently, EPA feels there are many uncertainties concerning the feasibility of implementing such a strategy by 1977. The only significant development and testing program currently on-going is being conducted by the state of New York. EPA feels this program has the potential to develop and provide information for the implementation of a heavy duty retrofit program by 1977. Accordingly, the Agency has approved this strategy for the New York plan.

While Maryland's heavy duty retrofit proposal appears to be basically approvable, EPA does not feel the plan provides adequate assurance that Maryland will develop a program of their own for the development and testing of such devices or indicate a commitment to establish an understanding to use information developed through New York's program. Without this information, EPA does not feel this strategy is approvable at this time. Furthermore, even if this program was approvable, the Administrator believes emission reductions from heavy duty vehicles can be reduced at an earlier date through heavy duty vehicle delivery bans.

In light of this determination and in order to compliment similar measures in the District of Columbia and Virginia plans, the Administrator is proposing a delivery ban on heavy duty gasoline powered vehicles which will be effective during the peak traffic period (6:00 am-9:30 am). The ban will take effect July 1, 1974. The Administrator recognizes that the District of Columbia will impose this ban on January 1, 1974; however, in order to allow Maryland adequate time to adopt regulations and plans for implementation of this ban, the additional implementation time is warranted.

EPA encourages the State of Maryland to submit the required additional information on the heavy duty retrofit program. Such a program could eventually replace the proposed interim delivery ban.

Aircraft Emission Reduction

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climbout. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The Maryland Transportation Control Plan asserts that control of these emissions through modified ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide emission reduction in the National Capital Region. Maryland contends that a 50% reduction in hydrocarbon and carbon monoxide emissions can be achieved through the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and a 28 ton reduction in the area's carbon monoxide emission. Maryland assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standard.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be safe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport vice (50 percent reduction proposed by Virginia). In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and acceptable prior to 1977, the Agency believes it is reasonable to allow Maryland to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

Economic and Social Impact

The social and economic consequences of the measures included in the Maryland plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the government. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives

for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other resources and have contributed to the decay of urban centers.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Maryland portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held at the Holiday Inn, 8777 Georgia Ave., Silver Spring, Maryland on September 6, 1973, beginning at 9:00 a.m. Notice of the hearings on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the Maryland portion of the National Capital Interstate Air Quality Control Region.

The Administrator's final promulgation of transportation controls for the Maryland portion of the National Capital Interstate Region will consider the comments and testimony he receives, as well as any additional approv-

able strategies submitted by the State as part of the State plan before or at the hearings. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

Submittal of Written Comments

Interested persons may participate in this rule making by submitting written comments, preferably in triplicate, to the Mobile Source Enforcement Division, EPA, 401 M Street, SW., Washington, D.C. 20460. All relevant comments received on or before September 4, 1973 will be considered. Receipt of comments will be acknowledged, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the office of Public Affairs, EPA, 401 M Street, SW., Washington, D.C. 20460. This notice of proposed rule making is issued under the authority of Section 110(c) and 301(a) of the Clean Air Act. (42 U.S.C. 1857 et seq.)

EPA Studies and Guidelines

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of The Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study".

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas", December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific trans-

portation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles", November 1972. This report is available from EPA, Mobile Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures", FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines", FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control." This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions. (42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

Subpart V—Maryland

§ 52.1095 Inspection and maintenance.

(a) Definitions:

(1) "Inspections and maintenance program" means a program to reduce emissions from in-use vehicles by identifying vehicles which need emission-control-related maintenance and requiring that maintenance be performed.

(2) "Precontrolled vehicles" means light duty vehicles sold nationally (except California) prior to the 1968 model year and light duty vehicles sold in California prior to the 1966 model year.

(3) "Controlled vehicles" means light duty vehicles sold nationally (except California) in the 1968 model year and later light duty vehicles sold in California in the 1966 model year and later.

(4) "Loaded emissions test" means a sampling procedure for exhaust emissions which requires testing the engine under stress (i.e., loading) by use of a chassis dynamometer to simulate actual driving conditions. As a minimum requirement, the loaded emission test must include running the vehicle and measuring exhaust emissions at two speeds and loads other than idle.

(5) "Idle emission test" means a sampling procedure for exhaust emission which requires operation of the engine in the idle mode only. At a minimum, the idle test must consist of the following procedures carried out on a fully warmed-up engine: A vertification [sic] that the idle RPM is within manufacturer's specified limits and a measurement of the exhaust carbon monoxide and/or hydrocarbon concentrations during the period of time from 15 to 25 seconds after the engine was used to move the car or was run at 2000 to 2500 RPM with no lead for 2 to 3 seconds.

(6) "Retrofit" means the addition or removal of an item of equipment, or a required adjustment, connection, or disconnection of an existing item of equipment, for the purpose of reducing emissions.

(7) "Idle adjustment" means a series of adjustments which include RPM, idle air/fuel ratio and basic timing.

(8) "Initial failure rate" means the percentage of vehicles rejected because of excessive emissions of a single pollutant during the first inspection cycle of an inspection/maintenance program. (If inspection is conducted for more than one pollutant, the total failure rate may be higher than the failure rates for each single pollutant.)

(b) This regulation is applicable within the Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) The State of Maryland shall submit to the Administrator of EPA or his designee, no later than January 1, 1974, a detailed compliance schedule showing the steps that will be taken to establish and enforce an inspection and maintenance program pursuant to paragraph (d) of this section. The compliance schedule shall include:

(1) The text of any necessary statutory proposal and regulations that are needed to carry out the inspection/maintenance system.

(2) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of the needed legislation to the legislature and to ensure timely adoption of the regulations needed for paragraph (d) of this section.

(3) A detailed timetable describing the dates of ordering and of acquisition of necessary equipment.

(4) A signed statement by the chief executive or his designee identifying the sources and amounts of funding for the inspection/maintenance program and a timetable to ensure that proper funding levels are available. If funds cannot legally be obligated under existing statutory authority, the text of the needed legislation shall be submitted to the Administrator of the Environmental Protection Agency or his designee pursuant to paragraph (c) (1) of this section.

(d) The State of Maryland shall establish an inspection and maintenance program applicable to all light duty gasoline-powered vehicles registered within its confines. No later than March 1, 1974, the State of Maryland shall submit to the Environmental Protection Agency legally adopted regulations reestablishing such a program. The regulations shall include:

(1) Provisions for the inspection of all gasoline-powered light duty vehicles at periodic intervals of no

more than one year by means of a loaded (dynamometer) test.

(2) Provisions for inspection failure criteria consistent with the emission reduction claimed in the plan for the strategy. These criteria shall include an initial failure rate of 30 percent (see definitions).

(3) Provisions to ensure that failed vehicles receive the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts and knowledge to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging.

(5) Delineation of the agency or agencies responsible for conducting, overseeing and enforcing the inspection and maintenance program.

(6) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(e) After July 31, 1976, the State of Maryland shall not register nor allow to operate on its streets or highways vehicles which fall within this regulation and have not complied with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) After July 31, 1976, no owner of a vehicle which is affected by this regulation shall operate or allow to be operated a vehicle which does not comply with the applicable standards and procedures of paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

§ 52.1097 Vacuum Spark Advance Disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The State of Maryland shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the State of Maryland will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date on which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e)(2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(1) The State of Maryland shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the State of Maryland will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1098 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection

with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employ personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) (1) This Section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered:

(i) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalyst, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The State of Maryland shall establish a retrofit program to insure that on or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in (b) (2) of this section which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section and are used on the streets and highways of the State, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the State of Maryland shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c) (3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the State of Maryland shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways and light duty gasoline-powered vehicles specified in paragraph (b) (2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The State of Maryland shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. The State will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.1101 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.1100 (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks or vehicles existing at the time of promulgation of this regulation.

(g) The State of Maryland shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974 [sic].

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of components parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued fro the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraph (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed

alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(l) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.1100 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of this paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedule: Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to:

submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.1103 Management of Parking Supply.

(a) This section shall apply only in the event that the Administrator finds that the State of Maryland fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the State of Maryland or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the State of Maryland chooses to adopt any "equivalent measure" to this surcharge, the State of Maryland must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the State of Maryland is failing to implement the surcharge.

(c) In the event that the Administrator determines that the State of Maryland is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(b) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(c) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interefere with the attainment or maintenance of applicable Federal air quality standards.

(d) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before

a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type; the notice shall conform to the requirements of 40 CFR Part 51.4(b); and the agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

§ 52.1096 Reduction of employee parking.

(a) Definitions

(1) Governmental Entity—means a federal, state or local department, agency [sic] bureau, board, office, commission, district, or unit or any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment, even though such transit may not serve the area of the employee's residence.

(4) State Agency means State of Maryland, Bureau of Air Quality Control.

(b) This section shall be applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) (1) All facilities or installations owned, operated or leased by the federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c) (1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as Friendship Heights, Silver Spring to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d) (1) All facilities or installations owned, operated, or leased by state and local governments which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974 report to the State Agency the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential parking spaces contained in or on the facility or installation or publicly owned commercial type parking facilities.

(2) The chief administrative officer of all facilities or installations, subject to paragraph (d) (1) of this section, shall be [sic] April 1, 1974 submit to the State of Maryland, Bureau of Air Quality Control, a detailed report specifying whether the facilities or installations under his or her control are served by public transit at that time. This report shall include, but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced location [sic] such as

Friendship Heights, Silver Spring to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily. Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated and submitted annually, not later than April 1 of each successive year.

(e) Each governmental entity subject to paragraphs (c)(1) and (d)(1) of this section, and which in the opinion of the Administrator of State Agency is served by public transit shall comply with either paragraphs (e)(1) or (2) of this section. This governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In no case shall the charge be less than $20.00 per space per month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *Provided, however*, That no such funds shall be used to subsidize directly or indirectly employee parking; or

(2) Adopt a plan to reduce the number of parking spaces in each such facility from the number in existence on October 15, 1973, according to the following:

(i) By November 30, 1974, a reduction of 4 percent
(ii) By February 28, 1975, a reduction of 8 percent
(iii) By May 31, 1975, a reduction of 12 percent

(f)(1) Each entity of the Federal government subject to paragraph (e) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(2) Each entity of a State or local government subject to paragraph (e) of this section shall submit to the State Agency no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.

(ii) The amount to be charged per space per month.

(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.

(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(g) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under § 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges, shall likewise be in violation and subject to enforcement.

§ 52.1102 Elimination of drycleaning losses.

(a) Definition:

(1) A photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers or ketones having an olefinic or cycloolefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent;

(iii) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent;

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(b) This section is applicable in the Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) After May 31, 1974, no person shall cause, suffer, allow, or permit the use of any photochemically reactive

organic solvent for the purpose of drycleaning of clothing and household items.

(d) The owner or operator of any premise subject to the requirements of this section shall within 30 days of the effective date of this regulation submit to the Administrator the following information:

(1) Location of premise.

(2) Source of supply and identifying name, number or purchase specification for all drycleaning solvents used.

(e) Any owner or operator who fails to fulfill any requirement of this section shall be in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

§ 52.1099 Peak hour delivery ban regulation.

(a) Definitions:

(1) *Peak Hours*—The hours 6:00 AM to 9:30 AM Monday through Saturday.

(2) *Delivery Ban*—A program to reduce emissions from in-use heavy duty gasoline powered vehicles employed to deliver goods within the specified peak hours.

(3) *Heavy Duty Gasoline Powered Vehicle*—Any motor vehicle either designated primarily for transportation of property and rated more than 6,000 pounds GVW and which is powered by a gasoline burning engine. This shall not include mail trucks, and emergency type vehicles such as fire trucks and police wagons.

(4) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N are used therein with the meaning so defined.

(b) This regulation is applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) The State of Maryland counties of Prince Georges, Montgomery and all incorporated cities located within such county [sic] shall establish a peak hour, heavy duty gasoline powered vehicle use prohibition on streets and highways over which each entity has ownership and control. No later than February 1, 1974, each governmental

entity shall submit to the Administrator a legally enforceable program which shall include:

(1) Provisions for initiation of the ban no later than June 30, 1974.

(2) The prohibition shall state that heavy duty gasoline powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100, or both.

(d) The State of Maryland, counties and all incorporated cities within such counties subject to this section shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a peak hour delivery ban. The compliance schedule shall include the date by which the jurisdictions will recommend needed regulations to the appropriate body, and will identify the state, county, or city official responsible for enforcement.

(e) Failure to comply with any provisions of this regulation shall render such person in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule.

§ 52.1104 Limitation of off-street parking.

(a) This section shall apply only in the event that the Administrator finds that the State of Maryland fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the State of Maryland or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the State of Maryland chooses to adopt any "equivalent measure" to this surcharge, the State of Maryland must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the State of Maryland is failing to implement the surcharge.

(c) In the event that the Administrator determines that the State of Maryland is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the Federal Register, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the State of Maryland portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control [as] of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regulation becomes effective according to the following schedule:

(1) Within 90 days of the effective date—a 5 percent reduction;

(2) Within 120 days of the effective date—a 10 percent reduction;

(3) Within 180 days of the effective date—a 15 percent reduction.

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

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[40 CFR Part 52]

VIRGINIA; APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Notice of Proposed Rule Making

The transportation control plan submitted by the Commonwealth of Virginia for attainment of the primary national ambient air quality standards for carbon monoxide (CO) and photochemical oxidants (Ox) for the Virginia portion of the National Capital Interstate Region was disapproved in part on June 15, 1973 (38 FR 16563). This notice of proposed rulemaking sets forth regulations which in the Administrator's judgment could be implemented in addition to the approvable portions of the Virginia plan to attain and maintain the national standards for carbon monoxide and photochemical oxidants in the Virginia portion of the National Capital Interstate Region.

If revisions to the Virginia plan are submitted and determined to be approvable prior to Federal promulgation, these proposed regulations will be withdrawn. If revisions to the Virginia plan are submitted and determined to be approvable after Federal promulgation, then those Federal regulations will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the Virginia portion of the National Capital Interstate Region be a State plan carried out by the Commonwealth of Virginia or its designated representative.

Transportation Control Alternatives

Analysis of the air quality problems in the National Capital Interstate Region, which is partly located in the Commonwealth of Virginia, reveals that both photochemical oxidants and carbon monoxide exhibit unacceptably

high levels in the region, with the former being the pacing pollutant.

Since a substantial proportion of the photochemical oxidant problem and almost all of the carbon monoxide problem are the result of automotive vehicle emissions, measures to reduce emissions from individual vehicles and measures to reduce vehicular travel can be effective in improving air quality. Since a significant percentage of the oxidant-producing hydrocarbon emissions stem from vehicle-related sources associated with gasoline handling operations, measures to reduce these operational losses can also provide a measurable improvement in the regional air quality.

Reductions in emissions from vehicles can be obtained through inspection and maintenance programs and from incorporation of various retrofit devices. Reductions in Vehicle Miles Traveled (VMT) can be achieved through various pricing and taxing schemes for road use, adoption of parking restrictions, including limitations of available number of parking spaces, restrictions on idling or cruising of fleet vehicles, selective control of goods movement, the establishment of vehicle-free zones, establishment of a four-day work week, programs promoting the use of carpools or alternative modes of transportation, and limitations on gasoline usage. It must be emphasized that, in order to be effective, each VMT control measure proposed or adopted by the Commonwealth of Virginia must be reflected by identical or equivalent measures in the neighboring jurisdictions of Maryland and the District of Columbia for their portions of the National Capital Interstate Region.

In effecting substantial improvements in air quality, improvements in and expansion of public transportation facilities are a necessary and effective complement facilitating use of this alternative to the private automobile. Clearly, public transit improvements must be implemented in concert with the appropriate level of vehicle restraints, as determined by the regional characteristics of the private automobile use demand elasticity. Such improvements as greater coverage, increased frequency

of service, improved reliability, increased comfort and convenience, a reasonable cost, and adequate personal security will further encourage the use of public transit alternatives to the private automobile.

SUMMARY

The Virginia plan, as amended by the July 9, 1973, submission, in its demonstration of the attainment of the photochemical oxidant and carbon monoxide air quality standards, utilizes seven general measures. These are: the Federal Motor Vehicle Control Program, the Virginia Motor Vehicle Inspection and Maintenance Program for light duty vehicles, improvement in public transportation, increased terminal (or parking) costs, car pool locator service, restrictions on aircraft ground operations, and control of stationary source emissions. According to the Virginia plan, which utilizes data by the Metropolitan Washington Council of Governments for the entire National Capital Interstate Region, peak period hydrocarbon emissions were 63.3 tons for the region as a whole and peak period carbon monoxide emissions were 1133.5 tons in 1972. In order to demonstrate attainment of standards, the Council of Governments' calculations indicate that hydrocarbon emissions must be reduced by 67 percent of the 1972 emissions in the National Capital Interstate Region to a level of 20.9 tons/peak period, and that carbon monoxide emissions must be reduced by 55.6 percent of the 1972 emissions in the Region to a level of 501 tons/peak period.

Including projected increase in vehicle miles of travel, the Federal Motor Vehicle Control Program will reduce hydrocarbon peak period emissions by 47 percent to 33.6 tons and will reduce carbon monoxide peak period emissions by 49.0 percent to 576 tons/peak period by 1977. These estimates are adjusted to reflect the 1975 interim motor vehicle emission standards as announced on April 11, 1973.

Since the 21-day period for public comment on the additional submission has not been completed, it is impossible for the Administrator to make a final decision on

approval or disapproval of the strategies included in the Virginia plan at this time. This decision must take into consideration all comments received during this time. However, preliminary review by EPA indicates that certain strategies are likely to be approvable. Accordingly, the Agency is proposing only those items which, when added to the approvable measures, are necessary to attain the National Ambient Air Quality Standards.

If an apparently approvable strategy is determined not to be approvable, additional measures will be proposed.

The information contained in the additional submissions by Virginia appears to remedy many of the deficiencies on which the Administrator's June 15 decision was based.

The following is a summary of the actions EPA is proposing to take with respect to the Virginia Plan:

Federal Motor Vehicle Control Program—Reductions appear to be approvable based on projected vehicle populations and emission factors.

Motor Vehicle Inspection Program—Appears to be approvable, based upon proposed regulation and supporting data.

Improvements in Public Transit—

(a) Virginia participation in the area wide addition of 750 buses to current fleet—appears to be approvable, contingent upon clarification of certain administrative details.

(b) Exclusive Bus Lanes—appears to be approvable.

(c) System Improvements (i.e., shelters, fringe parking, improved scheduling)—Appears to be approvable.

Increased Terminal Charges—

(a) Elimination of free off-street, employee parking in certain areas—does not appear to be approvable.

(b) Elimination of on-street long-term parking in certain areas—appears to be approvable.

(c) $2.00 parking surcharge (or an equivalent measure)—appears to be approvable.

Bus/Carpool Locator Program—Appears to be approvable.

Restrictions on Aircraft Ground Operations—Partial reductions are allowable; appears to be partially approvable.

Increased Control of Stationary Source Emissions—Not approvable at this time due to lack of adopted regulations.

Due to the fact that:

a. Full reductions claimed for aircraft emissions do not appear to be allowable,

b. The plan did not include controls over heavy duty gasoline powered vehicles,

c. The portion of the plan dealing with elimination of free off-street employee parking does not appear to be approvable, and

d. The controls over stationary sources cannot be approved at this time.

EPA is proposing the following measures:

a. Initiation of commercial-type parking rates or reduction by 12 percent the available spaces at any federal, state, or local government facility which has 25 or more parking spaces and which is located in a high density employment area which is well serviced by public transit.

b. Retrofit by 1975 of all pre-1968 vehicles with a vacuum spark advance disconnect kit.

c. Retrofit of light duty 1971-1975 fleet vehicles (including federal government vehicles) and taxicabs with an oxidizing catalyst retrofit—beginning in mid-1976, to be completed by mid-1977.

d. Controls of emissions of hydrocarbons due to gasoline handling; both from the delivery truck to underground tank and from the pump to the vehicle. Implementation begins in 1974 and is fully completed by 1977.

e. Ban of heavy-duty-gasoline-powered vehicles (except emergency vehicles, mail trucks, etc.) from 6:00 a.m. to 9:30 a.m. beginning July 1, 1974.

Finally, since the $2.00 surcharge proposed by Virginia is integral to the success of this plan, EPA is proposing contingency strategies to be implemented if appropriate steps are not taken to implement the surcharge. These contingency measures are:

a. A ban on the construction, modification or enlargement of any parking facility without having first obtained a permit from the Administrator.

b. A phased 15 percent reduction in the number of off-street parking spaces.

The Administrator invites comments on these and any other measures which may be used to achieve the national ambient air quality standards for photochemical oxidants and carbon monoxide.

Two-Year Extension to Achieve Standards

The Administrator proposes to give a two-year extension for the attainment of the standard in the Commonwealth of Virginia. To attain the standards in 1975 would require stringent restraints on vehicle miles traveled which could not be considered to be "reasonably available," within the meaning of section 110 (c) of the Clean Air Act, or the implementation of a widespread catalytic retrofit program which could not be implemented due to technological problems before 1977. Although some measures have not been proposed here which have appeared in some other proposals, such as gasoline limitations and a selective vehicle exclusion program involving colored tags, the reduction in vehicle miles traveled expected from measures contained herein appears to be substantial and adequate to fulfill the requirement that reasonably available alternative measures be employed before an extension is given for any strategy. The plan proposed herein, along with the apparently approvable measures submitted by the Commonwealth of Virginia applies the reasonably available alternative means of control at the earliest possible dates. Comment is invited on any measures which have not been considered and applied and which can be considered to be reasonably available.

COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE NATIONAL CAPITAL INTERSTATE REGION ON MAY 31, 1977

	Carbon Monoxide		Hydrocarbons	
	Tons per Peak Period	Percent of Total Reduction Required	Tons per Peak Period	Percent of Total Reduction Required
Stationary Source Emissions Without Control Strategy	78		14.3	
Expected Reductions From:				
(a) Dry Cleaning Vapor Recovery	0	0	1.1	8.7
(b) Gasoline Handling Vapor Recovery	0	0	5.0	39.4
(c) Other Statutory Source Rule Strengthening	0	0	0	
Stationary Source Emissions Remaining	78		8.2	
Mobile Emissions from Highway Light and Heavy Duty Vehicles without Control Strategy	498		19.3	
Expected Reductions From:				
(a) Inspection and Maintenance	26	34.6	1.5	11.8
(b) VSAD Retrofit, pre-'68 cars	3	4.0	0.4	3.2
(c) Catalytic Retrofit of Fleet LDV's	5	6.7	0.2	1.6
(d) Mass Transit Improvements	21	28	2.7	21.2
(e) HDV Peak Hour Delivery Ban	27	36	1.0	7.9
(f) Aircraft Model Program		12	0.8	6.4
Mobile Emissions Remaining	416		12.7	
Total Emissions without Strategy (FMVCP Included)	576		33.6	
Total Reductions	82	169.3	12.7	100.2
Total Emissions Remaining	494		20.9	

Proposed Controls on Stationary Sources

The major stationary sources of hydrocarbon emissions, which have been identified in the Virginia plan, are the gas handling losses which occur in the distribution system for gasoline fuel, and the emissions losses from dry cleaning establishments. Since present regulations are inadequate to effect any substantial control of the resultant emissions, from gasoline distribution, the Commonwealth of Virginia has proposed regulations and compliance schedules which would reduce gasoline handling losses by 90 percent.

The regulation proposed by the Commonwealth of Virginia for control of hydrocarbon evaporative emissions at retail service stations and fleet owned stations requires the installation of 90 percent effective vapor recovery devices at stations handling over 50,000 gallons per month by May 31, 1975, and at stations handling over 25,000 gallons per month by May 31, 1977.

It is estimated that installations of 90 percent effective vapor recovery devices on all these service stations throughout the region will result in a total reduction of hydrocarbon emissions of 5.0 tons/peak period (6-9 a.m.) by May 31, 1977.

The Commonwealth of Virginia proposed the following additional regulations for the control of hydrocarbon emissions from stationary sources in the Northern Virginia portion of the National Capital Interstate Region:

(a) *Effluent Oil Water Separators*, which recover more than 200 gallons per of any petroleum product, are required to be equipped with vapor recovery devices which reduce the emissions of all hydrocarbon vapors and gasses into the atmosphere by at least 90 percent by weight.

(b) *Storage of Petroleum Products*, in any container of more than 40,000 gallons capacity is forbidden unless the container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is equipped with a floating roof or a vapor recovery system.

(c) *Organic Liquid Loading* (*Bulk Terminals*), shall be accomplished in such a manner that all displaced vapor and air will be vented out to a vapor collection system.

(d) *Gasoline Loading* (*Submerged Fill*), into any stationary tank with a capacity of 250 gallons or more is forbidden unless such tank is equipped with a vapor loss control device, or is a pressure tank as described in section (b).

Since photochemical reactive solvents are not used by any dry cleaning establishment in the Virginia portion of the National Capital Interstate Region, the hydrocarbon emission reduction by 1.1 tons per peak period is achievable without further specific action by Virginia.

The foregoing regulations as proposed by the Commonwealth of Virginia appear to be adequate to achieve the anticipated reduction in hydrocarbon emissions. However, the Administrator cannot approve these proposed regulations at this time, since 40 CFR Part 51 requires that all regulations dealing with the control of emissions from stationary sources be adopted at the time of submittal of

the plan. EPA is therefore proposing to promulgate similar regulations which will be rescinded upon submission of equivalent regulations as adopted by the Commonwealth of Virginia.

Proposed Controls on Mobile Sources

(Non-Aircraft)

The Commonwealth of Virginia, in its July 9, 1973 submission of additions and revisions to the implementation plan, proposes an idle mode emission inspection program with an initial failure rate of 30 percent in conjunction with its existing annual safety inspection program. The proposed timetable for legal authority (by July 1974), initiation of the inspection program (by January 1975) and completion of the first cycle (by June 1975) provides an enforceable measure for improving air quality by means of a 10 percent reduction in hydrocarbon emissions from light duty vehicles by mid-1975. Therefore, the Administrator feels that this portion of the Commonwealth of Virginia plan is approvable. Anticipated emissions reductions from the inspection/maintenance programs as proposed throughout the National Capital Interstate Region, are 1.5 tons per peak period for hydrocarbon and 26 tons per peak period for carbon monoxide.

In order to comply with the requirements of the Clean Air Act that primary standards be achieved as expeditiously as practicable, the Administrator proposes to promulgate a regulation requiring that on or before January 1, 1975, all pre-1968 light duty vehicles be retrofitted with a vacuum spark advance disconnect device which will reduce hydrocarbon emissions from such vehicles by 25 percent. If implemented throughout the National Capital Interstate Region, installation of these devices will result in a total reduction of hydrocarbon emissions of 0.4 tons per peak period and a total reduction of carbon monoxide emissions of 3 tons per peak period.

In order to attain the primary air quality standard by May 31, 1977, additional measures are required beyond

those proposed by the Commonwealth of Virginia. Since catalytic retrofit devices for light duty vehicles are expected to be readily available by 1977, it is proposed to require installation of these devices on selected segments of the light duty vehicle population. These segments include all 1971-1975 LDV fleet vehicles (e.g., taxis, GSA vehicles, rental cars, fleet delivery vehicles), capable of operating on 91 RON gasoline.

The regulation proposed by the Administrator will require that the vehicles designated be equipped with catalytic retrofit devices by May 31, 1977, effecting a 50 percent hydrocarbon emission reduction for each vehicle. Exemptions will be allowed for all 1975 vehicles originally equipped with the oxidizing catalytic converter on those vehicles which are certified to meet the original statutory federal emission standards for 1975. Based on information currently available to him, the Administrator estimates that:

Fleet vehicles account for 6 percent of total mobile source emissions. On the basis that one-third of the fleet vehicles will be older than two years (pre-1976), and catalytic retrofits can reduce automotive emission from each vehicle by 50 percent, it is apparent that this measure, when applied on a Region-wide basis, will result in a hydrocarbon emission reduction of 0.2 tons/peak period.

In the event that the measures proposed herein prove to be inadequate, the Administrator is required by law to apply additional reasonably available alternatives, including catalytic retrofit of other segments of 1968-1975 light duty vehicle population. Candidate segments include all light duty trucks, or passenger vehicles of specified model years. The public is urged to comment on these or any other type of control measure that may help to achieve the National Ambient Air Quality Standards.

Proposed Reductions in VMT

According to computer printouts provided by the Metropolitan Washington Council of Governments, the

Commonwealth of Virginia's transportation package (including participation in the area wide expansion of transit by 750 buses, exclusive bus/carpool lanes, a carpool locator service, and extensive parking restrictions) will result in a 12 percent reduction in 6-9 a.m. VMT and a corresponding reduction in total trips.

The Virginia plan includes the following strategies under its transportation measures:

(1) Participation with D.C. and Maryland in an area wide improved transit system, including the addition of 750 buses to the current area fleet, the establishment of exclusive bus lanes, bus shelters, and fringe parking facilities.

(2) Increased terminal cost, including the elimination of free parking and the establishment of a $2.00 parking surcharge for long term commuter parking in all areas adequately served by mass transit.

(3) Establishment of a computerized carpool locator service.

This portion of the plan is central to the Virginia plan for reduction of HC and CO emissions. Therefore, to avoid confusion and expedite comments, a discussion of the elements that make up this portion of the plan shall be included.

a. Elimination of Free Parking—The Commonwealth of Virginia proposes to have EPA eliminate off-street parking for federal employees; once this has occurred, the plan proposes that other employers (state, local government and private businesses) will then begin a program to eliminate free parking for their employees. The plan also calls for a reduction of available on-street spaces which will be achieved by the elimination of street parking for commuters.

The elimination of on-street spaces will initially be imposed in the Rosslyn and Crystal City areas of Arlington County and downtown Alexandria. Other high density employment areas will be analyzed for future restrictions as bus service expands. This program is scheduled for implementation in early 1975.

On the basis of the information submitted by Virginia, it is the Administrator's opinion that the portion of the Virginia plan dealing with elimination of on-street parking is approvable.

The reduction in off-street parking proposed by the plan is conceptually acceptable; however, there is not enough of a firm commitment indicated in the plan to permit approval of this element of the plan at this time. Therefore, EPA intends to propose those same strategies which Virginia had suggested in its plan, and thereby provide the firm commitment to implement Virginia's strategy.

As pointed out in Virginia's plan, reduction of emission due to work trips by Federal Government employees into, out of, and within Virginia is integral to achieving air quality goals. Therefore, EPA feels it has the responsibility to aid Virginia in the control of these emissions. As a result, EPA will follow Virginia's suggestion and propose a federal regulation which would effectively reduce emissions as a result of commuter trips by federal employees. This will be done by requiring Federal Facilities in high density areas served by mass transit to either eliminate free parking (by establishing commercial type rates) or to reduce the available parking spaces in these facilities by 12 percent.

Since the other jurisdictions in the AQCR have also proposed to eliminate free parking for employees of its government and Virginia's plan is unclear on this point, EPA is also proposing that State and local government parking facilities which have 25 or more spaces and which are located in high density employment areas which are served by public transit either eliminate free parking or reduce the available spaces by 12 percent. It is EPA's opinion that since this plan is regional in nature that this action is necessary to insure that the reductions achievable by this measure do, in fact, occur.

The Administrator feels that the result of this proposal will be to induce employees to utilize alternate modes of transportation such as buses and carpools and thereby reduce the VMT in the area. It should be noted that this proposal should result in a reduction of VMT for the

entire National Capital area because it will reduce VMT of employees from all three jurisdictions.

It is the Administrator's opinion that, at a minimum, the Rosslyn, Crystal City, Pentagon, and Downtown Alexandria areas, along with other areas would, in all likelihood, need to be included in any definition of "high density employment area which is serviced by mass transit" for this strategy to be effective.

b. $2.00 Surcharge (or its equivalent)

The Virginia plan proposes the imposition of a $2.00 per day surcharge (or an equivalent measure) on all long term parking facilities in employment areas which are adequately served by mass transit. Identification of the areas where the surcharge is to be imposed should be made by Virginia within the next 10 months upon completion of studies of the matter.

This proposal calls for the charge to be implemented and enforced by Arlington County or the Northern Virginia Transportation Commission (NVTC). The Administrator feels that if implemented, according to the schedule provided in the plan, this proposal is approvable.

It is well documented that no matter how well designed and operated a mass transit system is, unless there are disincentives to the use of the private automobile, mass transit shall be ineffective. Therefore, Virginia's proposals [sic] for the surcharge is integral to the success of the plan.

The Administrator wants to make it clear that if for any reason this strategy is not implemented according to schedule, he will institute equivalent measures. In order to avoid any delay in implementation of such equivalent measures and to invite timely public comment, the Administrator is proposing contingency measures in the plan which will become effective if it becomes apparent that the surcharge will not be implemented. Specifically, a phased 15% reduction in existing off-street parking spaces would be imposed, as well as ban on the construction, modification or enlargement of any parking facility without first obtaining a permit from the Administrator or a specified local Agency. Public comments are solicited on these contingency proposals.

c. Mass Transit Improvements

The development of an effective mass transit system is essential to the development of an effective transportation control strategy. If this control plan is to be successful, a sufficient number of buses with convenient service and adequate schedules must be provided. The improvement in the transit system is an area wide measure in which Virginia will participate with District of Columbia and State of Maryland.

The Virginia plan proposes that NVTC, which represents the local governments in Northern Virginia in public transportation matters, shall take all possible measures to assure that the area wide transit system's current fleet size is increased by 750 buses and that service and convenience for commuters is improved. Included in this proposal are provisions for installing bus shelters, providing expanded fringe parking, additional public information and improved scheduling. In addition, Virginia plans to institute a number of exclusive bus lanes on major highway corridors in the area. The local jurisdictions in conjunction with NVTC have allocated funds to provide subsidies to support a lowering and equalization of transit fares throughout Northern Virginia. All of these measures are meant to provide the increased mass transit service which will be necessary if air quality standards are to be achieved.

Based on the information contained in the documents submitted by Virginia, the Administrator believes that the proposals for increased mass transit are approvable, on the condition that certain administrative details are provided to him by the Commonwealth. Specifically, the arrangements or agreements which will trigger the expansion of the fleet should be clarified, since it is necessary for EPA to determine what actions are necessary to bring about any additional purchases of buses. Also a clarification on the schedule showing the projected incremental increases in fleet size should be provided.

d. Bus/Carpool Locator System

The Virginia plan recognizes the need for more efficient utilization of current automobile usage. Thus, the

plan proposes a voluntary bus/carpool locator matching service. This system will attempt to assemble lists of commuters with similar work schedules and home, [sic] work locations, and will be phased in starting with a pilot project during 1973. Full operation of the system is scheduled for April 1974. The Administrator feels that this measure is approvable, and encourages residents of the National Capital area to take advantage of this service.

Along with the benefits accruing to this system in terms of a potential decrease of vehicle miles traveled, this system also has the advantages of fuel conservation and it will mitigate the impact of disincentives to private auto use (i.e., the surcharge and elimination of free employee parking).

e. Heavy Duty Vehicle Restraints

In addition to the transportation measures described above, the Virginia plan discusses the problem of heavy-duty gasoline-powered vehicle emissions. The plan does not propose any measures to control these emissions; however, the plan discusses the possibility of either a heavy-duty vehicle ban between 6-9 a.m. or an emissions control retrofit program for Heavy Duty Trucks. The discussions indicate the need to achieve a 50 percent reduction in emissions from such vehicles to meet the standards by 1977. Such a strategy would be complementary to the approvable heavy duty emission control measures included in the District of Columbia plan and the concepts discussed in the Maryland plan.

Since the Virginia plan does not actually propose any heavy duty truck measures, the Administrator must propose a regulation which will achieve the required reductions. Therefore, EPA is proposing a delivery ban on heavy duty gasoline-powered vehicles which will be effective during the peak traffic period (6:00 a.m.-9:30 a.m.). The ban will take effect July 1, 1974. The Administrator recognizes that the District of Columbia will impose this ban on January 1, 1974; however, in order to allow Virginia adequate time to adopt regulations and plan for implementation of this ban, the additional implementation time is warranted.

EPA has not proposed the heavy duty vehicle retrofit strategy discussed by the state of Virginia. Though a heavy duty retrofit strategy was proposed by the State of New York and approved by EPA, the uncertainties in its implementation date are such that EPA does not feel justified in proposing its establishment as a Federal Program. If the Commonwealth of Virginia wishes to propose a heavy duty strategy as a state program in a manner similar to New York's, then it may well be approved provided it is consistent with the New York Program.

It is recommended that if the Virginia Air Resources Board is considering for its plan a measure that requires the retrofit of heavy duty vehicles, it should actively work with the New York City Bureau of Motor Vehicle Pollution Control which has already made much progress in this area. For the approach to be approvable, Virginia must provide written commitments that appropriate arrangements will be made with the state of New York. This will provide a greater assurance that an acceptable device will be available in the Virginia portion of the National Capital Interstate Air Quality Control Region. However, even if Virginia were to adopt this strategy in conjunction with New York, reductions could not be achieved until 1977.

The Clean Air Act dictates that the Administrator must apply reasonably available interim strategies. The Administrator feels that reductions in emissions from this type of vehicle are possible through imposition of restraints in use of this type of vehicle.

Aircraft Emission Reductions

Aircraft emissions, as they affect ambient air quality, occur during approach, landing, taxi, idle, takeoff, and climbout. Heaviest emissions occur during taxi and idle when aircraft engines are operated at greatly reduced power.

The Virginia Transportation Control Plan asserts that control of these emissions through modified ground operations at Dulles and Washington National Airports can result in a significant hydrocarbon, and carbon monoxide

emission reduction in the National Capital Region. Virginia contends that a 50 percent reduction in hydrocarbon and carbon monoxide emissions can be achieved though the implementation of such ground controls at the two northern Virginia airports. Such a reduction would represent a 1.7 ton reduction in the area's hydrocarbon emissions and 28 ton reduction in the area's carbon monoxide emissions. Virginia assumes the required measures will be fully implemented by EPA and FAA during the next four years and takes full credit for the potential emissions reductions which they believe could result from these measures.

The assumed reduction in hydrocarbon emissions is necessary for the plan to demonstrate achievement of the oxidant standards; the claimed carbon monoxide reductions are not needed for attainment of the standards.

EPA has published an Advance Notice of Proposed Rulemaking for aircraft ground controls but has not yet proposed regulations for such controls. The Agency, however, is currently funding a demonstration project with FAA to determine if safety hazards would accompany modified ground operations. If the demonstration is successful, EPA will propose and promulgate regulations for the implementation of ground operations deemed free of safety hazards.

The Agency currently believes that certain ground and taxi operations included in the demonstration can be conservatively assumed to be safe and acceptable. EPA calculations indicate that the application of these measures could result in a 24 percent reduction in hydrocarbons at National Airport and a 30 percent reduction in hydrocarbons at Dulles Airport (vice 50 percent reduction proposed by Virginia). In light of EPA's intention to work jointly with FAA to promulgate and implement ground operations deemed safe and acceptable prior to 1977, the Agency believes it is reasonable to allow Virginia to accept credit for emission reductions which will result from controlling the ground operations conservatively felt at this time to be safe and acceptable. The percent emissions reductions indicated above which

would result from these measures would provide approximately a 0.8 tons reduction in hydrocarbons for the National Capital Region. Accordingly, the Agency will accept 0.8 tons of the claimed 1.7 tons reduction as being an approvable portion of the plan based on the expected implementation of ground operation regulations.

Economic and Social Impact

The social and economic consequences of the measures included in the Virginia plan or proposed herein are considered reasonable. For example, the inspection and maintenance procedures will require expenses of approximately $10 annually for the average vehicle inspected. The implementation of the VSAD retrofit program of pre-1968 vehicles will require that individual motorists pay approximately $20 installation costs. Though the price to the fleet vehicle owner for the catalytic retrofit is $135 per vehicle, this cost could gradually be reclaimed through slightly higher service or use fees for the fleet vehicles controlled. In addition, such expenditure can be deducted from income tax as a business expense, and therefore part of the cost will be absorbed by the government. Compensation for the expenditures associated with the modifications required by the gasoline handling regulations could similarly be gained through slight increase in the fees for station services or fuel prices. This also could be deducted as a business expense from the income tax. Distributed costs of the various mass transportation improvement measures, as well as the incentives for the use of express buses and carpools and disincentives on the use of automobiles by individual motorist-commuters, are also considered reasonable.

The measures providing transportation improvements are expected to benefit the public from the standpoint of improved traffic flow for commuters, general urban mobility, and energy consumption. The resulting VMT reductions may also have some impact on the sprawling development patterns fostered by widespread automobile use which are unduly wasteful of energy, land and other

resources and have contributed to the decay of urban centers.

Public Comments Solicited

Although the Administrator has concluded that the proposed plan is the best approach available to him at the present time for achieving compliance with the requirements of the Act, further analysis may demonstrate that more appropriate options are available. He therefore desires to obtain the comments and suggestions of the public on the problems of achieving the ambient air quality standards in the Virginia portion of the National Capital Interstate Air Quality Control Region. Comments are particularly invited pertaining to measures that may be taken by Federal, State, or local authorities to support or supplement the proposed air pollution control strategy, to implement these measures, and to compare social and economic effects of alternative pollution control measures.

Public hearings will be held at the Holiday Inn, Jefferson Plaza, 1489 Jefferson Davis Highway, Arlington, Virginia, on September 4, 1973, beginning at 9:00 a.m. Notice of the hearing on these regulations (including designation of locations for inspection and distribution of EPA proposals) is being published in the Virginia portion of the National Capital Interstate Air Quality Control Region.

The Administrator's final promulgation of transportation controls for the Virginia portion of the National Capital Interstate Region will consider the comments and testimony he receives, as well as any additional approvable strategies submitted by the Commonwealth as part of the Commonwealth plan before or at the hearing. These influences, and the additional analysis of alternative strategies that can be made in the time between this proposal and final promulgation, may lead the Administrator to adopt final regulations that differ in important ways from this proposal.

Submittal of Written Comments

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to EPA ATTN: Mobile Source Enforcement Division, 401 M Street, SW., Washington, D.C. 20460. All relevant comments received no later than September 4, 1973 will be considered. Receipt of comments will be acknowledged but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, EPA, 401 M Street, SW., Washington, D.C. 20460. This notice of proposed rulemaking is issued under the authority of section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857 et seq).

EPA Studies and Guidelines

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has published:

a. "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," November 1972. Both of these documents are generally known as the "Six Cities Study."

b. "Transportation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas," December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in a and b above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

c. "Control Strategies for In-Use Vehicles," November 1972. This report is available from EPA, Mobile Source

Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

d. "Transportation Control Measures," FEDERAL REGISTER (38 FR 15194) June 8, 1973.

e. "Aircraft and Aircraft Engines," FEDERAL REGISTER (37 FR 26488) December 12, 1972.

f. "Aircraft Emissions: Impact on Air Quality and Feasibility of Control." This report presents the available information on the present and predicted nature and extent of air pollution related to aircraft operations in the United States. In addition, it presents an investigation of the present and future technological feasibility of controlling such emissions.

(42 U.S.C. 1857 et seq.)

Dated: July 24, 1973.

ROBERT W. FRI,
Acting Administrator.

It is proposed to amend Part 52 of Chapter I of Title 40 of the Code of Federal Regulations by adding the following:

§ 52.2435 Reduction of employee parking.

(a) Definitions:

(1) Governmental Entity—means a federal, state or local department, agency [sic] bureau, board, office, commission, district, or unit or any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(2) Commercial Parking Rate—means the average rate charged by commercial parking facilities (excluding on-street parking meters) on a monthly basis within a 1 mile radius of a facility or installation covered by this section.

(3) Served by Public Transit—means that such transit is available during working hours within a reasonable walking distance of the employee's place of employment,

even though such transit may not serve the area of the employee's residence.

(4) State Agency means Commonwealth of Virginia, State Air Pollution Control Board.

(b) This section shall be applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) (1) All facilities or installations owned, operated or leased by the federal government which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the Administrator the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential (including barracks) parking spaces contained in or on the facility or installation.

(2) The chief administrative officer of all facilities or installations subject to paragraph (c) (1) of this section, shall by April 1, 1974, submit to the Administrator a detailed report specifying the level of public transit service to the facility and also the parking space utilization at the facilities or installations under his or her control at that time. This report shall include but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as (Rosslyn, Crystal City) to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation of the facility including:

(*a*) Average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily. Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated, and submitted annually not later than April 1 of each successive year.

(d) (1) All facilities or installations owned, operated, or leased by state and local governments which control, operate or lease a parking facility containing 25 or more spaces, shall by January 1, 1974, report to the State Agency the number of parking spaces in each such facility as of October 15, 1973. This number shall not include residential parking spaces contained in or on the facility or installation or publicly owned commercial type parking facilities.

(2) The chief administrative officer of all facilities or installations, subject to paragraph (d) (1) of this section, shall by April 1, 1974, submit to the Commonwealth of Virginia, State Air Pollution Control Board, a detailed report specifying whether the facilities or installations under his or her control are served by public transit at that time. This report shall include, but is not limited to:

(i) All public transit lines which have stops within one-half mile of any such installation or facility.

(ii) The practicality of the operation of shuttle service from presently well serviced locations such as Rosslyn, Crystal City to the facility or installation during morning and afternoon peak hours.

(iii) A summary of the existing parking situation at the facility including:

(*a*) average vehicle occupancy calculated from a visual survey of vehicles entering and leaving the facility over a full week's time.

(*b*) The percentage of vehicles with one, two, three and four occupants.

(*c*) The total number of vehicles using the facility daily.

Should the report state that the facility or installation is not presently served by public transit, this report shall be reexamined, updated and submitted annually, not later than April 1 of each successive year.

(e) Each governmental entity subject to paragraphs (c) (1) and (d) (1) of this section and which in the opinion of the Administrator or State Agency is served by public transit shall comply with either subparagraphs

(1) or (2) of this paragraph. This governmental entity shall either:

(1) Adopt a plan whereby a charge equivalent to commercial parking rates will be imposed for parking at any such parking facility owned, operated or leased by the governmental entity. In no case shall the charge be less than $20.00 per space month. Any funds collected by any governmental entity under this subparagraph may be used for any legitimate governmental purpose, *provided, however*, That no such funds shall be used to subsidize directly or indirectly employee parking; or

(2) Adopt a plan to reduce the number of parking spaces in each such facility from the number in existence on October 15, 1973, according to the following:

(i) By November 30, 1974, a reduction of 4 percent;
(ii) By February 28, 1975, a reduction of 8 percent;
(iii) By May 31, 1975, a reduction of 12 percent.

(f) (1) Each entity of the Federal government subject to paragraph (e) of this section shall submit to the Administrator no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces, or the initiation of commercial parking rates. In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.
(ii) The amount to be charged per space per month.
(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.
(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(2) Each entity of a State or local government subject to paragraph (e) of this section shall submit to the State Agency no later than June 30, 1974, a detailed compliance schedule showing steps it will take to achieve either the required reduction of spaces or the initiation of commercial parking rates.

In the case of a reduction of spaces, the schedule shall include provisions for marking those spaces to be eliminated in a manner obvious to members of the public (painting over, roping off, etc.). In the case of the initiation of commercial parking rates, the schedule shall include:

(i) A date for the initial imposition of the charge. Such date shall be no later than January 1, 1975.
(ii) The amount to be charged per space per month.
(iii) Any exceptions to the charge (e.g., handicapped personnel, certain high level officials of the governmental entity), including documentation of the need and rationale for such exceptions.
(iv) Provisions for annual reevaluation of the amount charged per space per month based upon any changes in commercial parking rates.

(g) Failure to submit any report or compliance schedule as required by this section shall render the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any governmental entity which either allows vehicles to be parked in excess of the number allowable, or which fails to collect commercial parking charges shall likewise be in violation and subject to enforcement.

§ 52.2436 Vacuum spark advance disconnect.

(a) For purposes of this section, "vacuum spark advance disconnect" means a device or system installed on the vehicle which prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears or when the vehicle is traveling below a predetermined speed.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before January 1, 1975, all gasoline-powered light duty vehicles of model year [sic] prior to 1968 and subject under presently existing legal requirements to registration in the area described in paragraph (b) of this section shall be equipped with an appropriate vacuum spark advance disconnect device.

(d) The Commonwealth of Virginia shall submit, no later than January 1, 1974, a detailed compliance schedule showing the steps it will take to implement and enforce this requirement. Such schedule shall include, as a minimum, the following:

(1) A date by which the Commonwealth of Virginia will evaluate and approve devices for use in this program. Such date shall be no later than March 1, 1974.

(2) A date by which installation of this equipment shall commence. Such date shall be no later than June 1, 1974.

(3) A date by which all vehicles subject to this section will be equipped with such devices. Such date shall be no later than January 1, 1975.

(4) Designation of any agency or agencies responsible for evaluating and approving such devices for use on vehicles subject to this section.

(5) Designation of an agency or agencies responsible for ensuring that the prohibitions of paragraph (e)(2) of this section shall be enforced.

(6) Method and proposed procedures for ensuring that those persons installing the devices have the training and ability to perform the needed tasks satisfactorily and that an adequate supply of devices will be available.

(7) Provision (apart from the requirements of any program for periodic inspection and maintenance of vehicles generally) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1975, the following shall apply within the Commonwealth of Virginia portion of the

National Capital Interstate Air Quality Control Region.

(1) The Commonwealth of Virginia shall not register a vehicle subject to this paragraph which is not equipped in accordance with paragraph (c) of this section.

(2) No owner of a light duty vehicle subject to this paragraph shall operate or allow the operation of any such vehicle that is not equipped in accordance with paragraph (c) of this section.

(f) The failure of any person to comply with any provision of this section shall render such person in violation of a requirement of an applicable implementation plan, and subject to enforcement action under section 113 of the Clean Air Act. As to compliance schedules, the Commonwealth of Virginia will be considered to have failed to comply with the requirements of this regulation if it fails to submit on a timely basis the required compliance schedule, and or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.2437 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbon and carbon monoxide from that vehicle.

(2) Fleet vehicle means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty gasoline-powered vehicle-for-hire) owned by any individual or business.

(3) Governmental entity means any agency of the executive branch of the Federal government, or a state or local department, agency, bureau, board, office, commission, district, or unit of any other type (excluding foreign embassies) which employs personnel paid wholly with public funds.

(4) All other items used in this section which are defined in 40 CFR Part 51, Appendix N, are used herein with the meanings so defined.

(b) (1) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(2) Classes of Vehicles Covered.

(i) Light duty fleet vehicles of model year 1971 through 1975, not already equipped with catalysts, or certified to meet original 1975 statutory light duty vehicle emission standards.

(c) The Commonwealth of Virginia shall establish a retrofit program to insure that or before May 31, 1977, classes of gasoline-powered light duty vehicles as specified in paragraph (b) (2) of this section, which are subject under presently existing legal requirements to registration in the area defined in paragraph (b) of this section above and are used on the streets and highways of the Commonwealth, are equipped with an appropriate oxidizing catalyst retrofit device. No later than March 1, 1974, the Commonwealth of Virginia shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use on motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c) (3) of this section are enforced.

(3) A provision that starting no later than May 31, 1976, the Commonwealth of Virginia shall commence retrofitting oxidizing catalysts to those light duty motor vehicles able to operate properly on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedure for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they will have an adequate supply of retrofit components.

(d) After May 31, 1977, the Commonwealth shall not register or allow to operate on public streets or highways any light duty gasoline-powered vehicle specified in paragraph (b) (2) of this section which does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicles which does not comply with the applicable standards and procedures implementing this section.

(f) The Commonwealth of Virginia shall submit, no later than October 1, 1973, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations which it will propose for adoption. The compliance schedule shall include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1975.

(g) Failure to comply with any provisions of this section shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement under section 113 of the Clean Air Act. The Commonwealth will be considered to have failed to comply with the requirements of this regulation if it fails to submit on time the required compliance schedule, or if the compliance schedule when submitted does not contain in satisfactory form each of the elements it is required to contain.

§ 52.2438 Control of evaporative losses from the filling of vehicular tanks.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) A person shall not transfer gasoline to an automotive fuel tank from gasoline dispensing systems unless the transfer is made through a fill nozzle designed to:

(1) Effect a vapor-tight fit between the fill nozzle and filler neck of the automotive fuel tank so as to prevent discharge of hydrocarbon vapors to the atmosphere.

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered.

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, or refrigeration-condensation system or equivalent.

(e) Components of the systems required by § 52.2439 paragraph (c) can be used for compliance with paragraph (c) of this section.

(f) If demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of fill neck configuration, location, or other design features, the provisions of this paragraph shall not apply to tanks or vehicles existing at the time of promulgation of this regulation.

(g) The Commonwealth of Virginia shall divide all facilities subject to this section into three classes, the first of which shall equal approximately 70 percent of hydrocarbon emissions from all gasoline stations, the second and third classes shall each equal approximately 15 percent of total hydrocarbon emissions from these sources. The classes shall be known as Class I, Class II, and Class III.

(h) Except as provided in paragraph (k) of this section, the owner or operator of a source included in Class I shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1974.

(2) Initiation of on-site construction or installation of emission control equipment or process change must begin not later than July 31, 1974.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1975.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources, subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(i) The owner or operator of a source included in the Class II shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of components parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1975.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1976.

(4) Final compliance is to be achieved not later than May 31, 1976.

(5) Any owner or operator of stationary sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(j) The owner or operator of a source included in Class III shall comply with the increments contained in the following compliance schedule:

(1) Contracts for emission control systems or process modifications must be awarded or orders must be issued for the purchase of component parts to accomplish emission control or process modification not later than March 31, 1975.

(2) Initiation of on-site construction or installation of emissions control equipment or process change must begin not later than July 31, 1976.

(3) On-site construction or installation of emission control equipment or process modification must be completed not later than March 31, 1977.

(4) Final compliance is to be achieved not later than May 31, 1977.

(5) Any owner or operator of stationary sources, subject to compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(k) Paragraph [sic] (h) and (i) of this section shall not apply:

(1) To a source which is presently in compliance with paragraph (c) of this section and which has certified such compliance to the Administrator by December 31, 1973. The Administrator may request whatever information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the Commonwealth and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 31, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1975, in the case of Class I sources, and May 31, 1976, in the case of Class II sources. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(1) [sic] Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (b) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

§ 52.2439 Gasoline transfer vapor control.

(a) The term "gasoline" means any petroleum distillate having a Reid vapor pressure of four (4) pounds or greater.

(b) This section is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight vapor return line from the storage container to the delivery vessel and a device that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapor displaced from the delivery vessel during refilling.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry; provided, however, said containers are equipped with submerged fill pipes.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this paragraph.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedule: Except as provided in paragraph (f) of this section, the owner or operator of any source subject to this section shall comply with this section on or before January 31, 1974.

(1) Any owner or operator in compliance with this section on the effective date of this regulation shall certify such compliance to the Administrator no later than 120 days following the effective date of this section.

(2) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(f) Any owner or operator of a source subject to paragraph (e) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions specified in paragraph (e) of this section as expeditiously as practicable but no later than June 30, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: Submittal of final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of on-site construction or installation of emission control equipment or process modification; completion of on-site construction or installation of emission control equipment or process modification; and final compliance.

(g) Any owner or operator who submits a compliance schedule pursuant to this paragraph shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.2440 Control of hydrocarbon emissions from effluent oil-water separators.

(a) This section is applicable in the Virginia Portion of the National Capital Interstate Air Quality Control Region.

(b) After December 30, 1973, a person shall not use any compartment of any vessel or device operated for the recovery of oil from effluent water which recovers 200 gallons a day or more of any petroleum products from any equipment which processes, refines, stores or handles hydrocarbons with a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such compartment is equipped with one of the following vapor loss control devices, except when gauging or sampling is taking place:

(1) A solid cover with all openings sealed and totally enclosing the liquid contents of that compartment.

(2) A floating pontoon or double-deck type cover, equipped with closure seals to enclose any space between the cover's edge and compartment wall.

(3) A vapor recovery system, which reduces the emission of all hydrocarbon vapors and gases into the atmosphere by at least 90 percent by weight.

(4) Other equipment of an efficiency equal to or greater than 1, 2, or 3 if approved by the Administrator.

This section shall not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil if the water fraction of the oil-water effluent entering the separator contains less than 5 parts per million hydrogen sulfide, organic sulfides, or a combination thereof.

§ 52.2441 Peak hour delivery ban regulation.

(a) Definitions:

(1) *Peak Hours.* The hours 6:00 a.m. to 9:30 a.m. Monday through Saturday.

(2) *Delivery Ban.* A program to reduce emissions from in-use heavy duty gasoline powered vehicles employed to deliver goods within the specified peak hours.

(3) *Heavy Duty Gasoline Powered Vehicle.* Any motor vehicle either designated primarily for transportation of property and rated more than 6,000 pounds GVW and which is powered by a gasoline burning engine. This shall not include mail trucks, and emergency type vehicles such as fire trucks and police wagons.

(4) All other terms used in this section which are defined in 40 CFR Part 51, Appendix N are used herein with the meaning so defined.

(b) This regulation is applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) The Commonwealth of Virginia counties of Arlington, Fairfax, Loudoun and all incorporated cities located within such county shall establish a peak hour, heavy duty gasoline powered vehicle use prohibition on streets and highways over which each entity has ownership and control. No later than February 1, 1974, each governmental entity shall submit to the Administrator a legally enforceable program which shall include:

(1) provisions for initiation of the ban no later than June 30, 1974.

(2) the prohibition shall state that heavy duty gasoline powered vehicles making deliveries in violation of the prohibition shall either be towed away, or the owner and/or operator subject to a fine of up to $100, or both.

(d) The Commonwealth of Virginia, counties and all incorporated cities within such counties subject to this section shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a peak hour delivery ban. The compliance schedule shall include the date by which

the jurisdictions will recommend needed regulations to the appropriate body, and will identify the state, county, or city official responsible for enforcement.

(e) Failure to comply with any provisions of this regulation shall render such person in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. A state or other governmental entity will be considered to have failed to comply with the requirements of this section if it fails to timely submit any required compliance schedule.

§ 52.2442 Limitation of off-street parking.

(a) This section shall apply only in the event that the Administrator finds that the Commonwealth of Virginia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the Commonwealth of Virginia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measure in those areas identified in the study by April 1, 1975.

(b) In the event the Commonwealth of Virginia chooses to adopt any "equivalent measure" to this surcharge, the Commonwealth of Virginia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the Commonwealth of Virginia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the Commonwealth of Virginia is failing to implement the $2.00 surcharge (or an equivalent measure)

he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definition:

(1) The term "off-street parking facility" means any land or building or portion of a building set aside for the purpose of storing a maximum capacity of 10 or more vehicles on a temporary basis.

(e) Each governmental entity, public agency, private corporation, partnership or sole proprietor owning or operating an off-street parking facility located within the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region shall, within 30 days of the effective date of this regulation, report to the Administrator the number of parking spaces in each such facility under its ownership or control [as] of the effective date of this regulation. The number used solely for the storage of vehicles of persons who reside within ¼ mile of the facility shall not be counted.

(f) Each such owner or operator of any off-street parking facility located within the area specified in paragraph (c) of this section shall reduce the number of affected parking spaces in each such facility from the number in existence as of the date this regulation becomes effective according to the following schedule:

(1) Within 90 days of the effective date—a 5 percent reduction;

(2) Within 120 days of the effective date—a 10 percent reduction;

(3) Within 180 days of the effective date—a 15 percent reduction;

(g) Each such owner or operator of an off-street parking facility subject to the requirements of this section shall submit to the Administrator, no later than 60 days after the effective date of this section, a detailed compliance schedule showing the steps it will take to achieve the required reduction in parking spaces. Such schedule shall provide for the marking in some manner obvious to the public (such as painting over, roping off, or the

like) of the eliminated spaces on which parking is not permitted pursuant to this section.

(h) Failure to submit a compliance schedule as required by this section shall render the person or governmental entity so failing in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. Any owner or operator of an off-street parking facility who allows any vehicle to be parked on any parking space which has been eliminated pursuant to this section, or who fails to mark clearly those spaces which have been eliminated, shall likewise be in violation and subject to enforcement.

§ 52.2443 Management of parking supply.

(a) This section shall apply only in the event that the Administrator finds that the Commonwealth of Virginia fails to take one or more of the following steps to implement the $2.00 surcharge (or an equivalent measure):

(1) Complete study identifying locations where surcharge or equivalent measure shall apply and submit to the Administrator by May 30, 1974.

(2) Submit to the Administrator legally adopted regulations of the Commonwealth of Virginia or other governmental entities to collect the surcharge or impose the equivalent measure by June 30, 1974.

(3) Institute the collection of the surcharge or impose the equivalent measures in those areas identified in the study by April 1, 1975.

(b) In the event the Commonwealth of Virginia chooses to adopt any "equivalent measure" to this surcharge, the Commonwealth of Virginia must submit to the Administrator by December 31, 1973, information demonstrating that such measure will in fact achieve the required result. Failure to demonstrate this fact adequately will cause the Administrator to determine that the Commonwealth of Virginia is failing to implement the surcharge.

(c) In the event that the Administrator determines that the Commonwealth of Virginia is failing to implement the $2.00 surcharge (or an equivalent measure) he shall make this determination public in the FEDERAL REGISTER, and this section shall then be immediately effective.

(d) Definitions:

(1) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land to use as a parking facility.

(2) "Modification" means any change to a parking facility which increases the vehicle capacity of such facility.

(3) "Enlargement" means any physical change or addition to a parking facility which increases the vehicle capacity of such facility.

(4) "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or enlargement.

(5) "Parking facility" (also called "facility") means any facility, building, structure, or lot or portion thereof used primarily for temporary storage of motor vehicles.

(e) No person, after the effective date of this section, shall commence construction of any new parking facility or modification or enlargement of any existing parking facility until he has first received from the Administrator or from an agency approved by the Administrator a permit stating the construction, modification or enlargement of such facility will not interfere with the attainment or maintenance of applicable Federal air quality standards.

(f) In order for any agency to be approved by the Administrator for purposes of issuing permits for construction of any new parking facility or any modification or enlargement of any existing parking facility, such agency shall demonstrate to the satisfaction of the Administrator that:

(1) Requirements for permit applications and issuance have been established. Such requirements shall include, but not be limited to, a requirement that before a permit may be issued, the following findings of fact or factually supported projections must be made:

(i) The location of the facility.

(ii) The total motor vehicle capacity before and after the construction, modification, or enlargement of the facility.

(iii) The normal hours of operation of the facility and the enterprises and activities which it serves.

(iv) The number of people using or engaging in any enterprises or activities which the facility will serve.

(v) The number of motor vehicles using the facility on an average hourly basis and a peak hour basis.

(vi) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projections shall include data concerning the availability of public transit from such areas.

(2) Criteria for issuance of permits have been established and published. Such criteria shall include, but shall not be limited to:

(i) Full consideration of all facts contained in the application.

(ii) Provisions that no permit shall be issued if such permit will result in the increase of VMT within any area, the air quality of which fails to meet applicable Federal air quality standards.

(3) Agency procedures provide that no permit for the construction, enlargement or modification of a parking facility covered by this section shall be issued without notice and opportunity for public hearing. The public hearing may be of the legislative type[;] the notice shall conform to the requirements of 40 CFR Part 51.4(b); and the Agency rules of procedure may provide that if no notice of intent to participate in the hearing is received from any member of the public (other than the applicant) prior to 7 days before the scheduled hearing date, no hearing need be held. Such a requirement, if imposed, shall be noted prominently in the required notice of hearing.

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Transportation and Land Use Controls

On April 30, 1971, pursuant to section 109 of the Clean Air Act (42 U.S.C. 1857c-4), the Administrator promulgated national primary and secondary ambient air quality standards for six pollutants (40 CFR Part 50). The Act requires that the primary standards protect the public health with an adequate margin of safety and that the secondary standards protect the public welfare from any known or anticipated adverse effects. Under section 110 of the Act (42 U.S.C. 1857c-5), States were required to prepare and submit to the Administrator plans for implementing the national ambient air standards in each air quality control region in the State. The Administrator published on May 31, 1972, (37 FR 10842, 40 CFR Part 52) his initial approvals and disapprovals of State implementation plans developed and submitted under this provision of Federal law.[1]

[1] Other approval and disapproval actions have been published as follows: July 27, 1972 (37 FR 15080), August 11, 1972 (37 FR 16177), September 22, 1972 (37 FR 19806), September 26, 1972 (37 FR 20117), October 28, 1972 (37 FR 23085), November 9, 1972 (37 FR 23836), February 8, 1973 (38 FR 3599), March 8, 1973 (38 FR 6279, March 20, 1973 (38 FRA [sic] 7323), March 23, 1973 (38 FR 7554), April 10, 1973 (38 FR 9088), May 14, 1973 (38 FR 7323) March 23, 1973 (38 FR 12920), May 23, 1973 (38 FR 13561), June 5, 1973 (38 FR 14752), June 15, 1973 (38 FR 15722), June 22, 1973 (38 FR 16550), [sic] primarily transportation controls), June 22, 1973 (38 FR 16351), July 3, 1973 (38 FR 17726), July 13, 1973 (38 FR 18652), July 16, 1973 (38 FR 18878), August 3, 1973 (38 FR 20835), August 14, 1973 (38 FR 20835), August 14, 1973 (38 FR 21918), and August 21, 1973 (38 FR 22473).

The presence in the ambient air of three of the pollutants for which control strategies were required to be submitted by States—carbon monoxide, hydrocarbons, and photochemical oxidants—is largely attributable to motor vehicles; consequently many States were unable to formulate and submit adequate control strategies that utilized only limitations on emissions from stationary sources. However, as the Administrator noted in his May 31 approval/disapproval of implementation plans, neither the States nor the Environmental Protection Agency had any practical experience that would permit the development of meaningful transportation control plans or the prediction of their impact on air quality. In this context, "transportation control plan" is defined as the summation of individual actions (transportation controls measures) that will, when taken collectively, reduce concentrations of carbon monoxide and photochemical oxidants in the atmosphere from those achieved by the stationary source control program and the Federal motor vehicle control program (FMVCP) to the level prescribed by the National Ambient Air Quality Standards. States were advised in August 1971 (36 FR 15486) that adoption of transportation control plans could be deferred beyond the statutory deadline for submittal of implementation plans but that the submitted plans would have to define the degree of emission reduction to be achieved through transportation control measures and identify the measures being considered. Transportation control plans were to be designed to augment the existing state implementation plan and the FMVCP. States were required to submit adopted transportation control plans no later than February 15, 1973.

Many States requested 2-year extensions pursuant to section 110(e) of the Act (42 U.S.C. 1857-5(e)) for the attainment of the primary standards for the three pollutants based on the unavailability of transportation control measures. The Administrator determined that, in fact, transportation control measures would not be available soon enough to permit attainment of the primary standards within the 3-year time period prescribed

by the Act; therefore, 2-year extensions were granted at the request of those States that had determined that transportation control measures would be necessary. In some cases, this meant that States were required to submit on February 15, 1973 transportation and/or land-use control measures that would achieve the standards by 1977. In other cases, the 2-year extension meant that certain States would not have to submit transportation control measures because the FMVCP and/or stationary source control would be adequate to achieve the standards by 1977 without the application of any other transportation and/or land use measures. In order to assist the States in the development of transportation control plans, the Environmental Protection Agency conducted numerous studies and made the results available to the States. In addition, contract assistance was provided in developing the plans for 14 of the affected regions, and the reports of these studies were made available to all the States.

On January 31, 1973, the U.S. Court of Appeals for the District of Columbia Circuit decided the case of "National Resources Defense Council Inc., et al. v. Environmental Protection Agency" 475 F.2d 968 (1973) and seven related cases, hereafter referred to as NRDC v. EPA. The court order held that the Clean Air Act did not permit the delay in submission of transportation control portions of State implementation plans until February 15, 1973, or permit the granting of extensions to mid-1977 for attainment of the national primary air standards where plans had not been submitted. The order required the Administrator to formally rescind through notice to the States and publication in the FEDERAL REGISTER the extension of time granted for submission of transportation and/or land-use control portions of implementation plans. It also required the Administrator to formally rescind in the same manner the extension granted to several States to delay implementation of their plans or portions thereof until May 31, 1977. The court further ordered the Administrator to inform the States concerned that all States that have not

yet submitted an implementation plan fully complying with the requirements of the Clean Air Act of 1970 must submit such a plan by April 15, 1973. That plan must satisfy each and every requirement of section 110 (a) (2) (A)-(H) if it is to be approved by the Administrator.

In accordance with this order, 22 States including the District of Columbia were notified by telegram on February 5, 1973, that any extensions granted because of the unavailability of transportation and/or land-use controls were canceled and that plans for the attainment and maintenance of the standards for the three pollutants would be required by April 15, 1973. A FEDERAL REGISTER notice was issued on March 20, 1973, (38 FR 7323), to complete the requirements of that court order by specifically amending the provisions of this part with regard to each of the States concerned. These amendments provided that every State granted an extension to achieve those primary standards and/or permitted to defer submittal of the transportation and/or land-use control strategies until February 15, 1973, would be required to submit no later than April 15, 1973, transportation and/or land-use controls showing achievement of the standards by 1975. In addition to those States that were required to submit transportation and/or land-use control strategies on February 15, 1973, a number of other States, which had regions that would not achieve the standard by 1975 but which had not been required to submit transportation control strategies because the FMVCP was capable of achieving the standards by 1977, were required to submit transportation control strategies on April 15, 1973. States that were not granted an extension but which had deficient plans were also required to submit transportation control strategies on April 15, 1973. Strategies adopted by the States must provide for attainment and maintenance of these standards by May 31, 1975. At the time of submission of these plans on April 15, 1973, the Governors of the States could request an extension up to 2 years for compliance with the provisions of these plans if the specific requirements of section 110(e) are satisfied by the State plan.

By June 15, 1973, 16 States including the District of Columbia had submitted transportation control plans. These plans were reviewed by the Environmental Protection Agency and were made available for public review and comment, including public hearings held by the States. Comments were received from the general public, other Federal agencies, public interest groups, industrial and business groups, and others. Based upon the comments received and the Agency's evaluation of the plans in light of pertinent legal requirements, the Administrator announced his approval/disapproval decision on June 15, 1973.

The approval/disapproval decisions were based on a detailed evaluation of the plans submitted by the States. Criteria for this evaluation include adequacy of control plans, provisions for adoption and submission procedures, accuracy of air quality data and emission inventories, extension request considerations, provisions for air quality and source surveillance, review of legal authority, adequacy of resources, and provisions for intergovernmental cooperation.

If the Administrator disapproved a State plan or portion thereof, or if a State failed to submit an implementation plan or portion thereof, he was required under section 110(c) of the Act to propose and subsequently promulgate regulations setting forth a substitute implementation plan. If regulatory portions of a State plan, including control plans and related rules and regulations, were disapproved or were not submitted, regulations setting forth substitute portions were proposed. When disapproved portions were of a non-regulatory nature (air quality surveillance, adequacy of resources, and intergovernmental cooperation), and therefore not susceptible to correction through promulgation of regulations by the Administrator, detailed comments were included in the evaluation report; in such cases, the Environmental Protection Agency will work with the States to correct the deficiencies.

Proposals for various States were published as follows: January 22, 1973 (38 FR 2194—California); February 7, 1973 (38 FR 3526—California); July 2, 1973 (38 FR 17682—California, Massachusetts, Minnesota, Ohio); July 3, 1973 (38 FR 17782—New Jersey, Pennsylvania, Texas); July 16, 1973 (38 FR 18938—Alaska, Arizona, California, Illinois, Utah, Washington); July 18, 1973 (38 FR 19132—California); August 1, 1973 (38 FR 20469—California); August 2, 1973 (38 FR 20752—Colorado, District of Columbia, Oregon, Maryland, Virginia); and August 3, 1973 (38 FR 20851—California, Minnesota, New Jersey, Texas).

To the extent possible, the Administrator's evaluation of State plans reflects the latest information submitted by the States. In the interest of giving the States every opportunity to bring their implementation plans into full compliance with the Act and 40 CFR Part 51, the Environmental Protection Agency has notified States that modifications submitted after the deadline for submittal of State plans would be accepted and considered provided that such modifications were made and submitted in accordance with the requirements of 40 CFR Part 51. Accordingly, many States have been, and still are, making and submitting modifications of their implementation plans.

The Act directs the Administrator to require a State to revise its implementation plan whenever he finds that it is substantially inadequate for attainment and maintenance of a national standard. In accordance with the statutory mandate, the Environmental Protection Agency will continue to evaluate the State plans and will, as necessary, call upon the States to make revisions.

Clean Air Act Requirements

Section 110(a) of the Clean Air Act requires that a valid implementation plan set forth a control strategy that attains the ambient standards as expeditiously as practicable, but no later than May 31, 1975. Some of the plans promulgated will meet this date. For those that cannot, however, an extension under section 110(e) of the Act of up to 2 years may be granted, if necessary, for attaining an ambient air quality standard. To qual-

ify for any extension, a plan must demonstrate that certain elements of the necessary control strategy will not be available by 1975; that there are no earlier, unused alternatives to these delayed strategies; and that emission control measures that are, in fact, reasonably available will be applied as soon as possible.

The effect of the requirement that an extension be granted only for a chosen control measure if "the necessary technology or other alternatives are not available," if "reasonably available alternative means" of emission reduction are considered and applied, and if "interim measures of control" that the Administrator determines are "reasonable under the circumstances" are applied, is to assure that the standards are obtained (in the words of section 110(a)), "as expeditiously as practicable." In essence, if a control measure is "technologically feasible," "practicable," "available," and "reasonable • • • under the circumstances," it should be part of a plan before any extension is given for other measures whose implementation in 1975 would not be technologically feasible, practicable, available, or reasonable under the circumstances. This provision of the Act applies to plans promulgated by EPA as well as to those submitted by the States. If EPA believed that such an extension would be needed for a region, the proposal to grant such extension was included in the proposed rulemaking.

Under the Clean Air Act the standards must be met by 1977 at the latest. Although both States and EPA should attempt to do this in the least costly and most practical way, the requirement of the statute is unconditional. The standards must be met by the deadline regardless of cost or technical feasibility. (A limited delay to 1978 may be allowed under § 110(f), under certain conditions.) In some regions of the country this would be possible only if substantial gasoline rationing is imposed, and the plans proposed for those regions accordingly provide for this measure in order to meet the technical requirements of the law. This does not mean, however, that the Administrator seriously desires to use such a measure.

Accordingly, it is intended to seek an amendment to the Clean Air Act for the specific purpose of allowing the Administrator to extend the attainment date and to take appropriate alternative measures for the relatively few cities that require extensive gasoline supply limitations to meet a 1977 attainment date. It should be emphasized, however, that any action by the Administrator to seek an extension beyond 1977 does not permit the delay in implementing all available control measures, even though the air quality standard will not be attained in 1977. The Administrator's intention to request additional time for attaining the standards in certain areas should in no way inhibit the rapid implementation of the feasible control measures discussed below. An additional amendment to the Act may be needed to strengthen legal authority and permit the more effective use of other measures that might better achieve long-term reductions in vehicle traffic, such as land-use planning.

POLLUTANT CHARACTERISTICS

Carbon monoxide is called a "primary" pollutant because it is emitted directly into the air. On the other hand, photochemical oxidant (primarily ozone) is a "secondary" pollutant; it results from the reaction of two primary pollutants (hydrocarbons and nitrogen oxides) in the presence of sunlight. As such, it differs from carbon monoxide in that the correlation between emissions of the primary pollutants and concentrations of the secondary pollutant is complex and subject to many variables. The reduction of oxidant concentrations depends upon reduction in precursor (primary pollutant) emissions, but not necessarily on a one-to-one, or linear, basis. The extent of the reduction in hydrocarbon emissions required to meet the air quality standards for oxidants, as determined by statistical evaluation of observed data, is specified in 40 CFR Part 51, Appendix J. However, the maximum measured values for the 1-hour photochemical oxidant values [sic] that can be used with the curve in Appendix J is only about 550 micrograms per

cubic meter ($\mu g/m^3$) or 0.28 parts per million (ppm). Several urban areas have experienced concentrations greater than this. Another limitation of the Appendix J procedure for determining needed hydrocarbon reductions is that the data base embodied in Appendix J was derived from oxidant and total hydrocarbon areometric data taken from several large cities—namely, Los Angeles, Washington, D.C., Denver, Cincinnati, and Philadelphia. Some areas, however, are now using an approach for calculating the effect of hydrocarbons according to their differing "reactivities", rather than using total hydrocarbons as the indicator. This differing approach is currently subject to scientific debate and constantly changing knowledge. Appendix J would not necessarily be appropriate for determining the degree of selective control of reactive hydrocarbons, as an alternative to control of total hydrocarbons. As a consequence of the use of reactive hydrocarbons in certain instances, and the limitations of the Appendix J curve in others, linear rollback was used in some transportation control plans to calculate required hydrocarbon reductions. EPA is continuing to study these problems and, if strategy changes become necessary as a result of future conclusions, appropriate plan revisions will be requested or proposed.

Transportation Control Measures

Transportation control plans provide for reductions in carbon monoxide and hydrocarbon levels required beyond the reductions provided by the Federal motor vehicle emissions control program and stationary source regulations set forth in the previously approved State implementation plans. These reductions are to be accomplished through the implementation of the transportation control plans incorporating the measures discussed below. These measures include additional stationary source controls, measures providing for a reduction in vehicle miles traveled (VMT), inspection and maintenance programs, retrofit emission controls for in-use vehicles, and gasoline supply limitation. Technical information on the inspection

and maintenance and retrofit measures discussed below are set forth in Appendix N to 40 CFR Part 51. The appropriateness of a particular measure for a specified area is determined by a variety of factors, which are also discussed below. Although the costs of certain measures are discussed in this preamble, the social and economic effects of the transportation plans have been evaluated on a state-by-state basis and are set forth in the individual State preambles.[2]

Considerations in selection of measures. The determination of which measures should be in a plan for a particular area is based upon several considerations. These include the severity of the pollution problem, the availability of control measures, the existing local control activities and conditions, the State transportation plans, the public hearing comments, the disruptive impact of certain measures, and the pollutant controlled.

In many areas with mobile source pollution problems, the air quality standards can be achieved by only a shift from our present reliance on the automobile to a more balanced reliance on all forms of public and private transit. In a number of these areas, emission controls on motor vehicles alone will never be adequate. Nonetheless, substantial improvement in air quality can be achieved by reductions in vehicle miles traveled to some extent by 1975 and up to 10 to 20 percent by 1977.

Since the air quality standards are to be achieved as expeditiously as practicable, the Administrator has considered the speed with which various emission control strategies could be implemented. Measures such as those providing for some VMT reductions can be implemented before other measures such as retrofits. Extensions in time, thus, could not be granted to retrofit measures until appropriate VMT reduction measures were provided at earlier dates.

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[2] "The Clean Air Act and Transportation Controls, An EPA White Paper", published in August, 1973, by the Office of Air and Water Programs, Environmental Protection Agency, provides additional analysis of social and economic impacts related to transportation control requirements.

The Administrator considered the existing activities, controls, and conditions in local areas. In view of the significant variations in local situations, the Administrator recognizes that transportation plans must be formulated with flexibility to complement local conditions. If an urban area is developing expanded mass transit facilities, the Agency's transportation plan might provide complementary control measures such as bus/carpool lanes. Conversely, if stationary source controls are presently inadequate, additional stationary source controls might be added in lieu of other measures.

The State plans and public hearings aided this process. If the States have submitted plans that are in part approvable, the Administrator has attempted to promulgate measures that supplement the approved portions [sic] the measures included in the plan the State is expected to submit. The Administrator has also made many changes based upon constructive public hearing testimony on the proposed plans.

The disruptive impact of various control measures was reviewed. Certain measures, such as the catalytic retrofit device, may place a large financial burden on the individual vehicle owner as compared with other retrofit devices or VMT reduction measures. On the other hand, the amount of VMT reduction that could be accomplished without a significant disruption varied according to the transit alternatives and traffic patterns existing in a specific region. The Administrator considered these factors and their relationship to the legal mandates of the Clean Air Act.

Characteristics of the pollutant being controlled had an impact on the plan. Carbon monoxide is generally a localized pollutant problem often limited to a central business district. The oxidant or smog problem, however, usually covers an entire urban-suburban area. Consequently, the VMT reduction control measures may vary according to an area's pollution problem. Furthermore, certain retrofit control devices are more effective on controlling the emissions of carbon monoxide than hydrocarbons or the reverse.

Based on the factors noted above, the Administrator generally determined the control strategy according to the following priorities, which reflect guidance provided by the statute: (1) Additional stationary source control; (2) some VMT reduction measures and/or limited inspection and maintenance; (3) additional VMT reduction measures, and/or vehicle retrofits; (4) catalytic converter retrofits; and (5) gasoline supply limitations in 1977.

Additional Stationary Source Controls

Controls to prevent hydrocarbon emissions will be imposed on a variety of stationary sources. These regulations have been patterned using the general examples of emission limitations attainable with reasonably available technology (40 CFR Part 51, Appendix B). The major changes have been to tailor the requirements to local restrictions such as the Los Angeles County Air Pollution Control District (APCD) Rule 66 and the Texas Regulation V—Control of Air Pollution from Volatile Carbon Compounds. In addition to stricter controls on many organic solvents used for paint thinners, dry cleaning, degreasing, printing, and other industrial processes, vapor recovery systems that prevent evaporation of gasoline vapors into the air will be required for the various phases of gasoline marketing. Most stationary source controls can be implemented by 1975. The implementation of vapor recovery systems depends upon whether the controls are placed on the filling of service station tanks (Stage I), or on the filling of individual vehicle tanks (Stage II) and whether the degree of control in Stage II is 80 percent or 90 percent. In most regions of the country, the Administrator has concluded that implementation of Stage I controls can be completed by March 1, 1976, assuming that all regulatory authority is adequate by March 1, 1974, and that 24 months are needed for full implementation with partial implementation achieved by March 1975. If the Stage II measure requires 80 percent control, its implementation can be completed by June 31, 1976. Much of the work needed to develop such systems is already underway. If a Stage II measure requires 90 per-

cent control, its implementation can not be completed until May 31, 1977, since the technical problems are greater. In a few regions, these timetables can be accelerated, particularly where the number of stations involved is not excessive. The EPA is currently carrying on an investigation of the desirability of exempting certain organic compounds from control and of the adequacy and feasibility of various hydrocarbon emissions control methods.

Moderate Reductions in Vehicles [sic] Miles Traveled

In the majority of regions requiring additional controls, the combined impact of stricter controls on stationary sources and the establishment of an inspection and maintenance system will not provide emission reductions adequate to achieve the standards by 1975. Consequently, EPA is promulgating a variety of measures to reduce vehicle miles traveled in these regions.

The Administrator has noted that in several urban areas a shift from our present reliance on automobiles occupied by one or two persons to a greater reliance on other forms of transit is essential to the achievement of the air quality standards. Significant reductions in vehicle miles traveled can also be accomplished within a limited time span. In making this determination, the Administrator recognizes that the States have had practically no experience with transportation control measures as a means of dealing with air quality problems and that the success of particular VMT reduction measures is difficult to predict. However, recent developments involving bus lanes, mass transit improvements, carpool programs, bikeways, and other innovations indicate that many VMT reduction measures are available and feasible. Furthermore, the public in many of our urban areas recognizes the need to place less emphasis on the automobile for urban mobility and is already encouraging the implementation of steps to develop alternative forms of transit. Accordingly, the Administrator believes that reasonable

VMT reduction measures can be successfully implemented.

Some of the regulations being promulgated will have significant effects on the future development of urban transportation in the major cities of this country. A clear implication of these air plans is that future augmentation of mass transit must focus not only on the center city streets but also on urban/suburban routes. It is expected that the regulations will lead not only to substantial reductions in air pollution, noise, congestion, and energy consumption, but to the development of more mass/rapid transit to serve the growing urban and suburban regions of the nation. The need, desirability, and feasibility of reducing urban auto use are no longer issues. The problem is determining the degree to which VMT reductions can be reasonably implemented within the limited time frames.

The amount of VMT reduction that can be considered "reasonably available" varies greatly according to a city's individual characteristics and the ability of other modes of transportation to absorb the demand that would be created by a significant VMT reduction. A measure cannot be considered "reasonably available" if putting it into effect would cause severe economic and social disruption. Although some reduction in personal travel could certainly be absorbed without disruption, to achieve a significant VMT reduction, the bulk of the travel displaced from single-passenger automobiles must be absorbed by such other modes of transportation as carpools, walking, bicycling, or public transit.

The significant expansion of public transit facilities that can be accomplished by 1975 depends on the upgrading and expansion of bus services. Much can be done in this regard. Scheduling and service can be improved. Individual lanes of freeways and other major roads can be set aside for the exclusive use of buses. Significant numbers of new buses can be purchased and put into service by 1975; according to Department of Transportation figures, 2,500 transit buses were sold in this country in 1972, but there is considerable potential for expansion

of the transit industry's production by two- or three-fold. Foreign sources of supply could provide additional resources.

The Environmental Protection Agency is working with the Department of Transportation to assure increased Federal support for short-term augmentation of mass transit capacity and appropriate modifications of highway facilities to permit increased utilization of mass transit.

In addition to public transit, part of the transportation demand created by VMT reductions can be absorbed by carpools. Private automobiles, which are designed to carry four to six persons, carry an average of 1.1 to 1.4 persons per trip for work trips in major urban areas, and thus represent the largest unused pool of transportation capacity presently available.

The measures mentioned above are primarily concerned with providing an alternative to low-occupancy use of private automobiles. Although measures such as buying more buses and improving bus service, providing for carpool programs, building bicycle paths, and (in the long run) building new rapid rail transit systems increase the availability and attractiveness of alternative transit forms, VMT reductions will not necessarily be achieved unless disincentive restrictions are placed on the use of automobiles.

The applicability of both measures—incentives such as bus lanes that increase the attractiveness of alternative transit forms and disincentives such as parking limitations that discourage the low-occupancy use of private automobiles—varies according to the conditions in the individual urban area. For example, bus lanes are a mere appropriate strategy in Washington, D.C. than certain other areas. Similarly, parking restrictions are more applicable to a major center like Boston than to a small city with few transit alternatives like Fairbanks, Alaska.

After consideration of the already available transit alternatives, the city's local conditions, and the applicability of various incentive and disincentive measures, the Administrator has determined that varying degrees of VMT reduction are feasible in particular areas. The plans developed suggest that a 3 to 10 percent VMT reduction can be achieved in the vast majority of affected regions by 1975. Since the Act specified that all reasonably available measures be instituted before any time extension is granted, the Administrator is taking into consideration all VMT-related measures presently being implemented by a municipality and augmenting those measures with methods that are available, applicable, and adoptable in the individual area by 1975.

Through our studies and the public hearing process, the Agency has also determined that it may be unrealistic to expect reductions in auto use in a region as a whole greater than 10 to 20 percent by 1977. Greater reductions may be achieved in limited areas under appropriate circumstances as is illustrated by New York City, which has a well developed transit system and hopes to accomplish a 40 percent VMT reduction in the downtown area by 1977. Generally, however, reductions beyond 10 to 20 percent would require a special and, in most cases, unreasonable effort unless driving is to be cut without a corresponding increase in mass transit. Achievement of even the levels provided for in these plans will require a strong commitment by local areas to implement strict disincentive programs, improve mass transit, and make carpooling or other programs work.

EPA is promulgating a number of measures designed both to increase the attractiveness of alternative forms of transit and to discourage the low-occupancy use of automobiles. The measures include: on-street and off-street parking reductions, regulatory fees for mass transit augmentation, vehicle free zones, bus/carpool lanes, carpool matching systems, carpool programs stressing preferential treatment, and heavy-duty vehicle bans. In some instances, proposed VMT measures are not being promulgated. These various alternatives are presented in the following discussion.

Parking restrictions. Parking restrictions are used in the majority of plans to discourage automobile use in urban centers. Restrictions in the central business district can significantly reduce carbon monoxide levels. As a measure to discourage the commuter from using his

vehicle, parking limitations can effectively reduce emissions during the rush hour and result in reduced oxidant concentrations later in the day. On-street parking regulations can also result in decreased congestion and reduced emissions due to improved traffic flow.

In most EPA proposals, all parking facilities on which the actual construction work had not begun by August 15, 1973, would have been subject to review. In response to comments received, this definition has been revised to exempt such facilities if the actual construction contract has been let by that date.

However, where a developer has undertaken to build a facility, whether individually or as part of a larger structure, but the actual construction contract has not yet been signed, review will still be required. It is EPA's judgment that the project in such circumstances will still be at an early enough stage so that review to determine the possibility of decreased use of single-passenger automobiles will still be justified. However, the Administrator also recognizes that such review may be unduly burdensome in particular cases, and comment on this point is particularly invited. If the comments indicate that a less restrictive definition is justified, the promulgated regulations will be amended accordingly.

Regulatory fees for mass transit augmentation. Several of the plans call for the imposition of regulatory fees on parking. In earlier Notices of Proposed Rulemaking, the Agency expressed some doubt about its authority to impose such fees. That legal question has been extensively reexamined, and EPA has now concluded that such a step is authorized by the statute. The transportation control measures promulgated today will require a significant change in the driving habits of the American people. The use of fees can help to bring that change about with a minimum of social disruption because of the wide latitude they leave to individual choice. Those whose needs or preferences are strongly in favor of using the single-passenger automobile may continue to do so, although at a somewhat higher cost; those who can easily adapt to the use of other modes of transport will have a financial incentive to do so. Many public comments supported the adoption of such fees. In addition, the enforcement of such fees will be less difficult than some other measures. Finally, such fees will be used to support mass transit. Expansion of mass transit is essential if the disincentives to automobile use imposed by transportation control plans are to have the desired effect. Such a use of the proceeds will also greatly mitigate the potentially regressive nature of such fees.

In requiring the States and EPA to impose transportation controls where they are needed to meet air quality standards, the Congress imposed a regulatory task whose difficulty and complexity are virtually unparalleled. The legislative history shows that Congress fully recognized the magnitude of the problem. At the same time, the statute's description of the exact types of measures that may be imposed is extremely broad and general. In the face of this broad language, the Administrator concluded that the Congress intended him to impose the method of control that he determined was best able to achieve the purposes of the statute.

Carpool systems. Experience to date with carpool programs suggests that policies to encourage carpooling might double auto occupancy rates for downtown peak period work trips. If a 10 to 50 percent increase in auto occupancy is adopted as a realistic range of possible effects, the net effect of carpool policies on total urban area auto use might be a 5 to 10 percent reduction.

EPA is promulgating measures that provide computerized carpool matching programs and preferential carpool treatment programs. The matching program provides for the formation of carpools and the preferential treatment programs provide incentives such as free parking to encourage carpools. Under the measures included in some plants, disincentives such as parking space reduction or paid, rather than free parking, are included to discourage single occupancy on commuter trips.

Bus lanes. Bus priority treatment consists of allocating highway facilities preferentially to buses for the purpose of improving the quality of bus service. Methods of effecting bus priority treatment in the transportation

plans include reserved lanes for buses (and/or carpools), preferential access for buses at freeway ramps, and certain traffic engineering improvements. The forms of bus lanes set forth in either the plans proposed or approved by the States or promulgated by EPA include normal bus flow lanes, and contra-flow lanes. In the case of California, the U.S. Department of Transportation suggested that dedicated freeways or major roads be used as an alternative to the bus lane approach. Based on comments received, EPA has determined that the bus lane concept is preferable in these promulgations.

The use of bus (and/or carpool) lanes has been observed to increase mass transit freeway speeds by a factor of two or more. Through the elimination of congestion problems, bus service dependability is increased as late arrivals are significantly reduced. Furthermore, bus ridership should increase, and the fares may eventually be reduced. Because of these factors, the regulations set forth for bus lanes are expected to be a positive inducement to increased bus patronage. The timetables for implementation of bus lanes will vary according to regional situations.

Heavy-duty vehicle restrictions. The economic fabric of this country's urban and suburban areas is dependent on an extensive and flexible system of truck deliveries to industrial and commercial establishments. At the same time, emissions from heavy-duty vehicles, which are almost exclusively trucks, are regulated far less stringently than those from passenger cars.

The degree of restriction on truck VMT consistent with the maintenance of a healthy economic structure in a region will vary greatly from city to city. In most instances, the potential for economic disruption combined with the low contribution of these trucks to total emissions caused EPA to reject such measures. In certain areas, however, it was determined that a restriction of truck operations to hours when their emissions are not likely to contribute to oxidant formation was practicable, and measures to accomplish this will be implemented.

Bikeways. America is enjoying an unprecedented boom in bicycle sales and useage. In 1972 bicycles outsold automobiles, 13 million to 11 million. Bicycle use has doubled in the past ten years.

A preliminary analysis by EPA suggests that increased use of bicycles in urban commuting could reduce VMT by 1 to 2 percent. Public comment in the course of this rulemaking also favored the increased use of bicycles.

At present the major obstacles to cycling are high accident rates, high bicycle theft rates, increased exposure to auto pollutants, and insufficient support facilities. The last problem tends to cause the previous three, and all of them could therefore be greatly alleviated by providing segregated bikeways and adequate support facilities.

Many regions affected by these promulgations intend both to expand their networks of such bikeways and to integrate them with mass transit facilities. EPA fully supports and encourages such programs.

Vehicle free zones. Traffic free zones are primarily promulgated to control local carbon monoxide problems. The zones are necessarily restricted in size (approximately ten blocks or less) in order to provide foot access. Consequently, the zones can be put into effect by 1975 since no additional transit facilities are required. Although increasing the size of the vehicle free zone tends to increase the potential air quality improvements, such action also increases the problem of access, circulation, and peripheral congestion and pollution.

Selective vehicle use prohibitions. In several regions, EPA proposed a regulation under which the vehicle population would have been divided into five categories. Each category of vehicles would have been required to display prominently a tag of a distinctive color; on one day of each working week vehicles marked with one such color would have been forbidden to operate.

Testimony at all the public hearings indicated that measures of this type so far proposed would be unenforceable because of their severeness and arbitrary nature. In addition, the number of additional enforcement personnel necessary to implement such a program would then have been so great as to preclude the reasonable

availability of this measure. Were they to be implemented, many very workable methods of evading the requirements would doubtless be devised.

Inspection and maintenance. Considerable reductions in motor vehicle emissions can be achieved by requiring all vehicles in an area to be tested annually for emissions, and then requiring those vehicles that exceed a certain level to be serviced until they can pass the test. This process is called "inspection and maintenance" (I/M). If additional stationary source controls are not adequate to attain the standards, the Agency considered the implementation of inspection and maintenance measures as well as measures to reduce vehicle miles traveled.

Two different types of inspection programs have been promulgated: (1) an "idle test" program that measures emissions while the vehicle is running in neutral and (2) a "loaded test" program that measures emissions while the vehicle is running in gear on a treadmill-like device called a dynamometer. The effectiveness of these programs depends primarily upon the fraction of the vehicle population forced to obtain corrective maintenance. For example, a program of inspecting idle mode emissions is estimated to result in reduction of 11 percent for hydrocarbons (HC) and 10 percent for carbon monoxide (CO). These results assume that the standards set for the inspection are sufficiently stringent to assure that 50 percent of the vehicles tested would fail the test if no unsual maintenance were obtained prior to the inspection. This concept is generally referred to as an "initial failure rate" of 50 percent. (Of course, if such vehicles are maintained in anticipation of the inspection, they need not fail, and emissions will be reduced.) An initial failure rate of only 10 percent for an idle test provides reductions of 6 percent for HC and 3 percent for CO. A loaded mode inspection should provide a 15 percent HC and a 12 percent CO reduction at a 50 percent initial failure rate and an 8 percent HC and a 4 percent CO reduction at a 10 percent initial failure rate. These reductions are representative of an annual inspection program. If semiannual inspection programs are employed, additional reductions are expected.

Annual emissions inspection on State-operated lanes is estimated to cost less than $2 per vehicle. Maintenance costs observed in fleet studies of various I/M approaches have been found to lie in the range of $20 to $30 for those failing the inspection test. However, the annual average maintenance cost to all vehicles subject to inspection is estimated to be about $3 per vehicle when the cost of maintenance that would normally have been performed voluntarily is netted out of the estimated maintenance cost.

If the State has adequate regulations to implement an I/M program by March of 1974, the State should be able to acquire necessary equipment, prepare facilities, train personnel, complete a pilot program, and be ready to begin an inspection cycle by May 1, 1975, for an idle test program and by August 1, 1975, for a loaded test program. Accordingly, a year's cycle could be completed and full credit taken for an I/M program by May 1, 1976, or August 1, 1976. These compliance dates represent approximately an 8- to 9-month delay of the inspection schedules previously proposed. The original schedule assumed the State could begin taking actions to set up inspection systems by summer of 1974. Time extensions are thus generally required for the implementation of inspection and maintenance programs.

A few States, however, have either already begun implementing inspection and maintenance programs or have existing safety inspection lanes. The State of New Jersey already has an emission inspection program operating as does the City of Chicago. In other areas, such as Portland, Oregon, the State government has taken the initial steps to make an I/M program operational. EPA has thus used or accepted earlier completion dates in certain situations. The Agency has also used completion dates slightly later than those mentioned above for States that have already developed realistic implementation time schedules that require a limited amount of additional time.

Although no programs have been conducted to investigate the effect of inspection and maintenance on medium-

duty vehicles (vehicles weighing from 6,000 to 10,000 pounds), these vehicles are similar to light-duty vehicles; engine design, operational characteristics, and maintenance habits are closely related to the average automobile. Thus, the Administrator has determined it is reasonable to predict similar effects for inspection and maintenance of medium-duty vehicles as have been discussed above for light-duty vehicles.

Retrofits. If additional stationary source controls, moderate VMT reductions, and implementation of inspection and maintenance cannot provide an adequate reduction to achieve the air quality standards, the Administrator considered the implementation of retrofit emission control measures. A retrofit measure can be defined as the addition of any device, system, modification, or adjustment made on a motor vehicle after its initial manufacture to achieve a reduction in emissions. The retrofit packages considered included: vacuum spark advance disconnect (VSAD) with lean idle; air bleed to the intake system; exhaust gas recirculation; oxidation catalyst for both medium- and heavy-duty vehicles.

Implementation of strategies employing these retrofit systems cannot be completed by May 31, 1975, and thus an extension is required for these strategies. Accordingly, as required by the Act, the Administrator considered and applied all measures available by May 31, 1975, before promulgating retrofit measures. It should also be noted that the implementation of an inspection and maintenance program accompanies the implementation of all retrofit measures owing to the need to keep the retrofit devices in good operating condition.

Vacuum spark advance disconnect (VSAD) with lean idle. Two basic engine modifications employed by the motor vehicle manufacturers in meeting Federal exhaust emissions standards have been the leaning of air/fuel ratios and the modification of ignition (spark) timing. The modification of these parameters in pre-controlled (pre-1968) vehicles similarly reduces exhaust emissions. Because 1968-and-newer vehicles have utilized these modifications to some extent to meet Federal emission standards, this retrofit technique is considered to be applicable

only to pre-controlled vehicles. This judgment has recently been supported by difficulties the State of California has experienced with this retrofit on controlled vehicles. It is further recognized that this retrofit cannot be used on approximately 10 percent of pre-controlled vehicles that do not employ vacuum spark advance. This system will accomplish average emissions reductions per retrofit vehicle of 25 percent for HC and 9 percent for CO.

The initial cost of purchase and installation of this system, which is commercially available, is estimated to be $20. Device maintenance can probably be limited to an annual readjustment of the idle air/fuel ratio and would cost about $5. The VSAD retrofit is considered the most cost-effective retrofit device.

The VSAD retrofit device is currently being used on over 800,000 vehicles in the United States and thus no further evaluation of its emission reduction potential or development is required. If necessary regulations are adopted by March of 1974, States can order and receive the devices, complete an installation training program and be prepared to begin installing the system by December of 1974. Installation of the device on all pre-controlled vehicles could be completed within a year and thus full implementation can take place by December of 1975.

Air bleed to the intake system. Many devices have been designed to introduce, by one means or another, excess air into the intake system of a vehicle. This is one way of reducing HC and CO levels. The reduction achieved varies with the amount of air allowed into the intake system. This technique is applicable to some extent to all light-duty vehicles, but because of the relatively lean air/fuel ratios on controlled vehicles the technique is only being promulgated for pre-controlled vehicles. Emission reductions of 21 percent for HC and 58 percent for CO are expected to result from the implementation of this measure. The installed cost of the air bleed system is estimated to be approximately $40 to $60. A fuel economy improvement of 4 percent as-

sociated with the use of this device would reduce operating costs by $1.20 per 1,000 miles of operation.

No air bleed device has been evaluated to the extent necessary to allow immediate implementation actions. It currently appears that substantial data on such systems will be available from EPA by November 1974. Allowing the States 2 months to review data on this device and to approve specific manufacturers, selection of an approved device should be completed by January 1975. Seven months for manufacturing, installation, and training and an additional 12 months for installation on the vehicle population would result in full implementation by August 1976.

Oxidation catalyst. Because of the automotive industry commitment to the use of catalysts in meeting future Federal emission standards, it follows that catalyst systems are being identified as retrofit candidates as well. Catalyst retrofits are applicable to cars capable of running properly and without excessive engine wear on a commercially-available, lead-free gasoline. Such lead-free gasoline will be commercially available by July 1, 1974, as a result of regulations promulgated by EPA on January 10, 1973. EPA's best estimate of the proportion of cars to which catalytic systems are applicable is 20 percent of pre-1971 and 75 percent of 1971-1974 model year vehicles.

The implementation of a strategy employing catalytic retrofits is expected to account for emissions reductions of 50 percent for HC and 50 percent for CO.

Estimates of the cost to be borne by the consumer for a catalyst retrofit package will vary according to the type and age of the consumer's vehicle, and the organizational structure selected for retrofit installation. With an installation program run in State-owned (or franchised) inspection and installation centers, the average initial cost would be approximately $125. However, with an installation program designed to make use of traditional distribution channels and local service establishments, the initial price could rise to well over $300. All retrofits, however, could be financed through a state or local tax program.

The catalytic retrofit devices has not been evaluated to the extent necessary to allow immediate implementation action. Substantial data, on this device, however, should be available by the fall of 1974. This will allow time for the States to review these data, and approve a particular manufacturer's product. Orders for this device could probably be placed by January of 1975. From the time the order is placed until first installation will require 10 months because of the more extensive design and manufacturing requirements of the catalysts. Installation of a catalyst system is significantly more time consuming than for other retrofit strategies. (Three man-hours compared to less than 1 man-hour for air bleed.) To minimize the impact of these installations on the service industry, 18 months have been estimated for installation on all qualified vehicles with full implementation by May 1977. If only fleet vehicles are retrofitted with catalysts, or if only one model year of vehicles is retrofitted with catalysts and 1968 or later models are retrofitted with other devices, catalyst retrofit installation could be completed within 12 months or by December of 1976.

In view of the high cost of the individual vehicle owner associated with catalytic retrofit devices and the long implementation time, the Administrator has promulgated this measure only after other available and applicable measures short of gasoline supply limitations were applied. Since the measure requires an 18- to 24-month extension—and, consequently, all other measures can be considered—catalytic retrofits are only promulgated for areas with severe air pollution problems.

In addition, consideration is being given to retrofit of gasoline-powered vehicles in the 6,000 to 14,000 pound class, commonly referred to a medium-duty (6,000 to 10,000 pounds) and heavy-duty (above 10,000 pounds). There is very limited application of these measures since they are presently being evaluated. Those regions that will implement these measures are active participants in this evaluation.

Gasoline supply limitations. Several of the proposed transportation controls included measures to limit the gasoline supply in certain areas in order to reduce vehicle miles traveled. The measure included two types of regulations: (1) a gasoline supply lid that would become effective in 1974 to limit the quantity of gasoline sold to fiscal 1973 levels; and (2) a regulation to be implemented on May 31, 1977, to reduce an area's gasoline supply, and thus VMT, to the extent necessary to achieve the standards.

The gasoline supply lid requirement has been dropped as a primary measure. The Act requires that all "reasonably available" measures must be implemented by May 31, 1975, before granting an extension. Based upon the comments received at the public hearings on this measure and the Agency's evaluation of the feasibility of implementing and administering successful gasoline supply limitations, the Administrator has determined that a gasoline supply lid cannot be considered "reasonably available." The possibilities of evasion, the likelihood of noncompliance, and the difficulty of enforcement are too great to make this measure practicable.

The gasoline supply reduction regulation to be implemented on May 31, 1977, however, has been retained in several plans. As was noted above, the Clean Air Act required air quality standards to be achieved by 1977 without regard to cost or social disorganization that may result as a by-product of achievement. If gasoline supply limitations are needed to achieve the standard, the "reasonableness" criterion is not a determining factor. Accordingly, the Administrator was obligated to use gasoline supply limitations as a final resort measure in certain areas with severe air pollution problems. Most of these areas required reductions in vehicle miles traveled far in excess of 10 to 20 percent. In some regions, however, the required VMT reductions may well be accomplished through the specified VMT reduction measures. Gasoline supply limitations were required in these areas only to assure the attainment of the standards by 1977. If a review of air quality data and VMT reduction monitoring information prior to 1977 indicates that the gasoline reduction measure is not required, supply limitations will not be implemented.

Legal Authority and Enforcement

In the complex field of transportation controls, States and other governmental entities have a special obligation to carry out and enforce implementation plans simply because Congress has placed that responsibility upon them. In a comparable situation, a Federal court has held that a county government and local sewage districts can be required, under implementation plans to control water pollution, to install sewage treatment facilities to handle the pollution created by individual citizens emitting pollution directly into a public body of water.

Many of the measures promulgated herein include requirements that Federal, State, or local units of government take specified actions to control air pollution from transportation systems. The Clean Air Act and its legislative history demonstrate that this was the intent of Congress. The approach of leaving primary responsibility for implementation at the State and local level is also made necessary by the nature of air pollution generated by millions of individual vehicles operating on an extensive network of public roads owned and administered by State and local governments.

The specific requirements imposed herein upon States and localities are based largely on two conclusions in addition to the factors discussed above: (1) that the governmental units must abide by valid implementation plan requirements just as much as any other source owners, and (2) that they are the owners and operators of pollution sources through their ownership and operation of highway transportation facilities.

The question has been raised in public comment whether governmental entities may be subject to Federal regulation and Federal enforcement under the Clean Air Act. There is no doubt that regulations may be applicable to such entities under the Act. Section 113 of the

Act permits Federal enforcement of applicable implementation plans against "any person" who is in violation of "any requirement." Section 302(e) states, "When used in this Act * * * the term 'person' includes [a] * * * State, municipality and political subdivision of a State." Section 118 extends the requirement of obedience to such plans to Federal entities.

The question remains, what kinds of requirements must a State or other governmental entity comply with? The most obvious situation is one in which a State is operating a direct stationary pollution source such as a municipal incinerator. It is no less clear, however, that the Act allows the control of many kinds of direct and indirect sources relating to mobile pollution. Parking and road facilities constitute such sources and the control of them is a valid exercise of the authority in section 110 (a)(2)(B) and 110(c) to promulgate such regulations as may be necessary to attain the national ambient air quality standards.

Transportation is a necessary service. In our society, the form in which it is provided depends overwhelmingly on the regulatory, taxing, and investment decisions made at all levels of government. By building and maintaining roads and highways, by licensing vehicles and operators, by providing a system of traffic laws, and in many other ways, government has encouraged the growth of automobile use to its present levels. There is nothing inevitable about such a choice. Governments could equally well have chosen to discharge their basic function of maintaining a transportation system in ways that would have discouraged the use of single-passenger automobiles, and encouraged the use of mass transit. But often they have not.

The production of food, electricity, and other consumer and industrial goods is as necessary in our society as transportation. In each case, the Clean Air Act authorizes regulations requiring such an activity, whether State or private, to be undertaken in the least polluting way in order to attain and maintain the air quality standards. There is no valid distinction between such production facilities and the State-owned automotive transportation facilities. In a comparable situation, the Supreme Court has held that State-owned rail transportation facilities must comply with Federal safety regulations.

A direct source of air pollution is one from which pollution is emitted directly into ambient air. Direct sources include not only automobiles and other vehicles, but also the facilities on which they are located during their operation—parking facilities and roads. Pollution is emitted directly into the ambient air from such facilities, and often the most feasible method of reducing it is by imposing restrictions on their owners and operators.

Many such facilities may also be viewed as indirect sources of air pollution. An indirect source is one that encourages mobile source pollution at locations not necessarily coincident with the source itself by serving as a trip attraction for automobile drivers, or which provides a parking or driving convenience. Thus, the availability of ample, low-cost parking facilities and high-speed freeways influences individuals to use vehicles with as few as one person in them, rather than less-polluting modes of transit. Such facilities may legitimately be charged not only with the pollution arising directly from their premises, but also with the total pollution in the region emitted by the traffic increase which they encourage.

For these reasons, the Administrator has concluded that regulations placing restrictions on parking and on the use of road space are essential to reduce the amount of air pollution generated by automobiles, and that they are valid exercises of EPA's regulatory authority.

The Administrator is also promulgating regulations requiring that vehicles allowed to operate on public roads be inspected or "retrofitted" with emission control equipment. Use of public roads by large numbers of publicly registered and regulated vehicles without either proper maintenance or adequate control equipment also causes damage to health. The requirement that the road owners

and the licensing and regulating authorities prohibit such use is a reasonable means of preventing such damage.

Direct Federal enforcement and massive, duplicative Federal programs aimed at vehicles on an individual basis were not the means contemplated by the Act to solve these problems. It is clearly necessary that implementation of transportation control plans be carried out at the State and local level. The Chairman of the House Committee that reported out the amendments to the Act described their purpose as follows:

> If we left it all to the Federal Government, we would have about everybody on the payroll of the United States. We know this is not practical. Therefore, the Federal Government sets the standards, we tell the States what they must do and what standards they must meet. These standards must be put into effect by the communities and the States, and we expect them to have the means to do the actual enforcing.

Equally clear, however, is that the amendments of 1970 were designed to cure deficienies that had resulted from total reliance upon state and local action to solve what was increasingly recognized as a national health problem. The regulations now being promulgated will provide the necessary assurance that such state and local action will be forthcoming.

Under section 113(a)(1) and (2) of the Act, the Administrator is authorized to issue orders and to bring civil actions or seek penalties. Although the legal authority to enforce these plans is clear, the primary effort—as is true for all implementation plans—will be directed toward working with the States both to develop and to implement effective strategies. This effort should continue even after these measures have been promulgated, so that all affected states eventually assume voluntarily the direct responsibility for enforcement of the plans.

In some instances, new regulations will be necessary on a State level. In others, existing regulations will be adequate. Where State-enacted Statutory authority is not

adequate, the Clean Air Act and these regulations can provide the legal basis for programs at the State or local level.

As a matter of administrative convenience, a provision regarding violations and enforceability is being deleted from the regulations being promulgated for each State, and replaced by a general regulation covering these subjects which is applicable to all regulations promulgated under this part. No change in meaning or effect is intended by this change. Each of the regulations promulgated or approved is considered to be enforceable by the Agency, including all regulations requiring employers to provide mass transit priority incentives.

Summary of Approval/Promulgation Actions

Approval/promulgation actions presented in the initial group cover 16 separate air quality control regions (AQCR) found in 8 states. The actions taken in these 16 separate cases concerning transportation control plans are shown in Table 1. Air quality control regions or subregions are identified using the name of a key metropolitan area associated with the region. For example, the Texas portion of the Southern Louisiana-Southwest Texas interstate region is designated Beaumont. Preambles and regulations are provided separately for each State.

TABLE 1.—*Approved/promulgation summary*

	Region [1]
Plan fully approved in initial group:	
Minnesota: Minneapolis-St. Paul	1
Oregon: Portland	1
Ohio: Toledo, Dayton	2
Total	4
Plans requiring partial EPA promulgation:	
Colorado: Denver	1
Ohio: Cincinnati	1
Total	2
Plans requiring total EPA promulgation:	
Massachusetts: Boston, Springfield	2
Texas: San Antonio, Dallas-Fort Worth, Austin-Waco, Houston/Galveston, Corpus Christi, El Paso, Beaumont [2]	7
Total	9
Plan being reproposed for later promulgation:	
Indiana: Indianapolis	1
Grand total	16

[1] Air quality control region or portion thereof.

[2] Only stationary source controls are promulgated in this action.

PUBLIC COMMENT AND REVIEW

These promulgations of transportation controls and those to be promulgated within the next few weeks have involved ample opportunity for both written comment and oral testimony. However, the Administrator wishes to call attention to the fact that it is always appropriate for members of the public and affected interests to submit written comments on rulemaking actions even after the regulations have been promulgated. Accordingly, although these regulations become effective upon promulgation, interested persons are encouraged to submit written comments to the Administrator or the appropriate Regional Administrators for 30 additional days from the date of promulgation of the transportation control plan for each region. This does not affect the timetable for bringing any legal actions regarding those plans. Petitions for review may be filed in the United States Court of Appeals for the appropriate circuits within thirty days from the date of each promulgation or approval, pursuant to section 307 of the Act (42 U.S.C. 1857h-5(b)(1)).

This rulemaking is made pursuant to section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857c-5(c) and 1857g).

Dated October 25, 1973.

RUSSELL E. TRAIN,
Administrator.

Part 52 of Chapter I, Title 40, is amended by adding § 52.23 as follows:

§ 52.23 Violation and enforcement.

Failure to comply with any provisions of this part shall render the person or Governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule.

[FR Doc. 73-23186 Filed 11-5-73; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Transportation Control Plan

This notice of final rulemaking sets forth transportation control plans for the following California Intrastate Air Quality Control Regions (AQCR) (thereafter referred to also as Regions): San Francisco Bay Area, Sacramento Valley, San Diego, San Joaquin Valley, and Metropolitan Los Angeles. A General Preamble was published on November 6, 1973, and is part of this rulemaking.

BACKGROUND

On March 20, 1973, by publication in the FEDERAL REGISTER (38 FR 7325), the Administrator, acting in response to a court order, notified the Governor of California that a transportation control plan should be submitted by April 15, 1973, for the first four of the five regions mentioned above.

The Los Angeles Metropolitan Intrastate Region was already the subject of a separate Court order. There, the U.S. District Court for the Central District of California ordered on November 16, 1972, that EPA propose a transportation control plan for the Los Angeles AQCR by January 15, 1973. This proposed plan appeared in the January 22, 1973, FEDERAL REGISTER (38 FR 2194) with minor corrections published on February 7, (38 FR 3526).

Extensive public hearings were held on the plan throughout the AQCR. The proposal was later revised

to make it consistent with the transportation control plans developed for the other Regions. This revised proposal appeared in the July 2, 1973, FEDERAL REGISTER (38 FR 17683) and was the subject of a public hearing on August 9-10, 1973.

California did not submit a transportation control plan by the Court-ordered deadline for the other four Regions and accordingly EPA was forced to propose substitute regulations for the San Francisco Bay Area, Sacramento Valley, San Diego, and San Joaquin Valley Intrastate Air Quality Control Regions, 38 FR 18948 (July 16, 1973). These regulations were the subject of public hearings in each of the affected Regions on August 6-10, 1973. No regulations were proposed for the Southeast Desert because the air pollution there comes almost entirely from the Los Angeles Region.

The transcripts of all public hearings are available for inspection at the Federal Information Center, 300 North Los Angeles Street, Room 1011, Los Angeles, California 90012; the U.S. Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111; and the U.S. Environmental Protection Agency, Office of Public Affairs, Room W 311, 401 M Street SW., Washington, D.C. 20460.

The plans promulgated today have, to the maximum extent possible, been drafted to reflect the expressed preference of the State of California and the affected local jurisdictions.

California Implementation Plan, Revision 3. The Governor of Califorina submitted Revision 3 of the California State Implementation Plan (SIP) to the EPA by letter dated July 25, 1973; it was received by the Region IX Office for the Administrator on August 2, 1973. This revision included the State's plans for transportation controls as well as a general revision to many rules and regulations pertaining to stationary sources. On September 21, 1973, the Administrator acknowledged receipt of the SIP revision in the FEDERAL REGISTER (38 FR 26462) and solicited public comment on that Plan. The notice gave the public 21 days (until October 12, 1973) to sub-

mit comments to the Administrator on the revised State plan. Based upon EPA's review of the Plan and a review of all relevant public comments, the Administrator will revise the approval/disapproval notice of the original implementation plan, published on June 22, 1973, in the FEDERAL REGISTER and rescind any EPA regulations that are deemed unnecessary based upon the State submittal.

Although the Administrator cannot make any final determintaion of the acceptability of the recently submitted State plan until all public comments have been evaluated, some tentative observations can be made.

The State Implementation Plan Revision 3 does not provide for attainment of the photochemical oxidant standard in the Los Angeles AQCR, nor is a strategy presented for attainment. The State Plan proposes the retrofitting of catalysts to automobiles and trucks in the San Francisco Bay Area AQCR; the EPA concurs with this strategy. The State Plan assumes a 95 percent reduction in aircraft emissions by 1977. The EPA believes that this reduction is not attainable without a significant reduction in the number of flights, and such a reduction is not feasible at this time. The State Plan endorses gasoline marketing controls to prevent gasoline vapor losses; the EPA also endorses such controls. The State Plan relies upon local transportation agencies, such as the San Francisco Bay Area's Metropolitan Transportation Commission, to develop and implement improvements in mass transit. The EPA endorses this approach, but requires that the improvements be spelled out in regulatory form. The State does not in all cases utilize the most recent air quality data; an example is San Francisco. For instance, more recent data for San Francisco suggest that emission reductions must be greater than those shown in the State Plan, and these data have been used in this promulgation.

Copies of the Environmental Protection Agency's testimony on the State Implementation Plan Revision 3 given at the State hearings on said Plan are available from the

EPA Region IX Office in San Francisco. Inquiries should be directed to the Regional Counsel, EPA Region IX, 100 California Street, San Francisco, California 94111.

SUMMARY

A significant reduction of reactive hydrocarbons will have to occur in all regions covered by this promulgation if the ambient air quality standard for photochemical oxidants is to be attained. In all cases, the controls promulgated will effect the required reduction in reactive hydrocarbons; attainment and maintenance of the oxidant standards will ensure attainment and maintenance of the carbon monoxide and nitrogen oxide standards as well.

The promulgated control measures reflect what EPA considers to be the most feasible approach for meeting the national standards in each region. However, these measures are subject to change subsequent to further study conducted by EPA and others.

Much of the reduction in photochemical oxidant levels will result from measures submitted by the State and already approved, but these measures are not enough to meet the standards. The Administrator has concluded that an extension of the deadline for achieving the standards to 1977 under section 110(e) of the Act is justified because the necessary technology or other alternatives are not available and will not be available soon enough to permit full compliance before 1977. The extension applies to all Regions covered by this promulgation for photochemical oxidants and for carbon monoxide. In reaching this conclusion, the Agency has considered, and applied as part of its plan, reasonably available alternative means of attaining the primary standard.

The plan set forth herein provides for the application of its requirements to most emission sources other than motor vehicles not later than June 1975, as required by section 110(e)(2)(A) of the Clean Air Act, and provides for the application of reasonable interim measures for

control of motor vehicle emissions as soon as they can reasonably be put into effect.

Most of the plan utilizes reasonable and apparently available means of reducing photochemical oxidants, carbon monoxide, and nitrogen dioxide. These measures include review of all new parking facilities with more than 50 spaces to determine their air quality impact; fees to increase parking costs at existing facilities; a ban on motorcycle use if stringent emission standards for new motorcycles are not established; and mandatory inspection and maintenance of light-duty vehicles (including light-duty trucks). In addition, bus-carpool lanes or other bus and carpool preference systems will be set up on selected major streets and highways, carpooling systems will be established in all Regions covered by this rulemaking, and employers who provide more than 70 employee parking spaces will have to take stringent steps to discourage single-passenger car commuting by their employees.

Retrofits of catalysts by 1977 and vacuum spark advance disconnect (VSAD) devices on some existing light-duty vehicles upon change of ownership will also be required.

Each of the measures discussed above will be applied as soon as it is reasonably available. However, in many cases implementation will not be practicable by 1975 due either to the present unavailability of the necessary equipment, to the administrative problems involved in setting up the necessary regulatory mechanisms, or to the need to phase in the measures so that the public can adjust to them. Accordingly, as noted above, extensions until 1977 in the time for achieving the standards have been granted to each of the Regions for which plans are being promulgated today.

Even if all the reasonable measures mentioned above are imposed on the timetable indicated (see Table 1), it is estimated that the national standards for photochemical oxidants will not be met in the Regions by 1977.

Under the Clean Air Act, the Agency has no choice but to include in the plan a measure that can achieve the standards by 1977. Consequently, gasoline sales limitations of whatever degree necessary have been included for 1977. If implemented, this would achieve the standards for both photochemical oxidants and carbon monoxide. However, the Agency will utilize every means available to avoid the need to impose severe gasoline rationing to reach that goal by 1977.

TABLE 1.—APPLICABILITY OF EPA CONTROL STRATEGIES FOR CALIFORNIA

Control measures	Regions				
	Los Angeles	San Francisco Bay Area	San Diego	Sacramento Valley	San Joaquin Valley
I. Stationary source:					
a. Vapor recovery at service stations	X[4]	S	S	X[4]	X[4]
b. Organic solvents usage	S	X	S[1]	X	X
c. Control of degreasing operations	X	X	X	X	X
d. Dry cleaning solvent vapor losses	X	X	X	X	X
e. Metal surface coating thinner and reducer	X	X	X	X	X
II. Mobile sources:					
a. Catalyst retrofit (1966-74), LDV and MDV	X[4]	X[4]	X	X	X
b. Vacuum Spark Advance Disconnect (1955-65)	S	S	S	X	X
c. Inspection/Maintenance (loaded)	X[4]	X[4]	X[4]	X[4]	X[4]
d. Motorcycle limitations [2]					
III. VMT Reduction measures:					
a. Exclusive bus/carpool lanes	X[5]	X	X[5]	X[3,5]	X[3]
b. Bus/carpool matching	X[5]	X	X[5]	X[5]	X[5]
c. Parking supply management	X	X	X[5]	X	X
d. Mass Transit incentives for employees	X[5]	X[5]	X[5]	X	X
e. Parking surcharge	X[5]	X	X		
f. VMT/air quality improvement monitoring program	X	X	X	X	X

Note: All AQCR's require O_x/CO extension to 1977.

X=EPA plan.
S=Included in approved State plan.
[1]=Additional regulations are being promulgated.
[2]=Limit only if new motorcycle emission standards not promulgated.
[3]=Require study and specific recommendations by State.
[4]=Included in State-submitted plans.
[5]=Recommended by State and local task force as VMT-reduction measure.

Summary of original proposal. Below is a summary of the controls proposed in the July 2 and July 16, 1973 FEDERAL REGISTERS for the affected Regions.

1. *Catalyst retrofit.* All automobiles in the San Diego, San Francisco, Metropolitan Los Angeles, Sacramento Valley, and San Joaquin Valley AQCR's, of model years 1966 through 1974, and capable of performing adequately on non-leaded 91 research octane number gasoline (approximately 75 percent of 1971 through 1974 model year cars and 20 percent of 1966 through 1970 model years) were to be equipped with a catalytic muffler. The cost of this device is estimated at $150 per car.

2. *Vacuum spark advance disconnect.* Automobiles of 1955 through 1965 model years in the Sacramento and San Joaquin Valley AQCR's would have been retrofitted upon change of ownership. The cost would be approximately $35. In the other critical AQCR's covered by this promulgation, the law currently requires the installation of such devices.

3. *Bus and carpool lanes.* In all AQCR's at least one lane for the exclusive use of buses and carpools was to have been provided on all 3- and 4-lane highways parking facilities would have been required to reduce capacity by 20 percent.

5. *New Parking facilities review.* All new parking facilities, public or private, were to have been reviewed for their impact on air quality before construction.

6. *Computerized carpooling service.* Under this proposal, the State would have to set up a computerized carpool matching system for application in the appropriate AQCR's.

7. *Limitation on gasoline sales.* Gasoline consumption in recent years has grown at a rate of about 4 percent per year. Under this proposal, sales in future years would have been limited to the amount sold in a 1972-1973 12-month period.

8. *Motorcycle controls.* This proposal would have limited the registration (and therefore growth in total number) of motorcycles, as well as placing an operating ban

on motorcycles during certain hours of the day during the "smog season."

9. *Inspection and maintenance.* Under this proposal, the State was to operate a network of inspection stations to detect and minimize the number of improperly adjusted or defective automobiles. Each vehicle was to be inspected yearly and maintenance performed on failing vehicles to minimize emissions.

10. *Stationary source controls.* These regulations included installation of vapor recovery systems at gasoline stations, additional controls on dry cleaning emissions, elimination of certain industrial solvent compounds, improved control on painting operation solvent loss, and additional restrictions on the loss of organic solvents in general industrial use.

SUMMARY OF PUBLIC COMMENTS

EPA held public hearings on its transportation control proposals in each affected AQCR, and these hearings were well attended. EPA was impressed with the quality, breadth, and detail of the testimony received and has attempted to modify its plan in response to public comments where possible. Comments were received both on specific technical controls and on broad public policy issues.

Economic incentives and disincentives. Many witnesses testified on the subject of emission "taxes", expressing the belief that economic incentives and disincentives might reduce vehicle miles traveled (VMT) more effectively than other measures, and, as a bonus, produce revenue that could be used for mass transit. In general, the schemes presented would either: (1) Surcharge gasoline sales heavily; (2) surcharge some features of the automobile related to its gasoline consumption level, such as weight, displacement, or number of cylinders; or (3) surcharge facilities that serve the automobile, such as parking. The revenue raised by these taxes or charges would be used to improve mass transit and/or subsidize the retrofitting of cars with emission control devices. The City of Los Angeles strongly urged the use of park-

ing fees to discourage unnecessary driving; it was estimated that a charge of only 50 cents per hour of parking time applied in the Los Angeles central business district (CBD) would raise over $10 million a year, or enough to put some 110 to 120 buses on the road. Many urged the adoption of schemes that both discouraged driving and raise revenue, since it was stated repeatedly at the hearings that the public would only accept restrictions on driving if it sees a feasible mass transit system being put into operation at the same time. Surcharge schemes, properly applied, can accomplish both objectives.

It was emphasized, however, that any scheme to surcharge parking must extend beyond the urban cores, in order to keep core areas competitive with outlying employment and shopping centers. If only CBD parking is charged, people may go where the parking is cheaper or free, further contributing to the decay of the central city. Witnesses also pointed out that parking charges to be effective must be applied to private as well as public parking.

Standards and attainment date. Significant controversy arose over two particular requirements under the Clean Air Act. The questions concerned: (1) Whether the National Ambient Air Quality Standard (NAAQS) for oxidant of 0.08 parts per million (ppm) for a 1-hour averaging time is an appropriate standard; and (2) if a socially disruptive measure such as extensive gasoline rationing is required to meet the NAAQS's for oxidant and carbon monoxide by 1977, whether the attainment date should be delayed beyond 1977.

The EPA, as required by the Clean Air Act, continuously reviews the medical basis for the NAAQS's. It is the Administrator's determination that to comply with the meaning of the Clean Air Act—that is, to protect public health with an adequate margin of safety—the 0.08 ppm standard for photochemical oxidant is a sound standard.

With regard to the second question, it is not within the authority of the EPA at the time of promulgation of this plan to extend attainment of the NAAQS's beyond 1977. The Clean Air Act specifically provides for no

major form of transportation, are unduly wasteful of land, energy, and other resources, and have contributed to the decay of central cities. Comprehensive land use planning that takes air quality into account can eliminate the need for many such controls through placement of sources, proximity of employment and residential centers, and provision for mass transit and other measures.

Regulations that require land-use planning tied to air quality considerations were recently promulgated by EPA in response to a court order (38 FR 15834, June 18, 1973). These "indirect source" guidelines required each State to submit to EPA appropriate review procedures, both long term and short term, to ensure the maintenance of the NAAQS in the future. The State of California has not submitted such review procedures to the EPA, although it is developing them. The Administrator has, therefore, proposed Federal regulations for the review of "indirect sources." These regulations will require the review for effect on air quality of all new large parking facilities, highways, airports, housing developments, and other development and/or construction that may increase automobile emissions because of increased vehicular travel.

The State of California Air Resources Board, under the direction of State Senate Bill 981, is developing an indirect source review procedure. The EPA believes that the review of indirect sources should be at the State and local level. Consequently, when the State submits an approvable procedure, the EPA will rescind any duplicating EPA regulations.

Review of new highway construction. Many comments were received on the continued construction of new highways. Urban sprawl is often precipitated by significant highway construction. Section 109(j) of the Federal Aid Highway Act, as amended, 23 U.S.C. 109(j), requires that any new Federally aided highway must be consistent with applicable implementation plans under the Clean Air Act. The "indirect sources" regulations or the State measures that may be approved in their place will be integral parts of these implementation plans.

Such regulations would not be consistent with the requirements of the statute or the court order if they were interpreted to allow construction of major new freeways in heavily polluted urban areas, such as the Century Freeway in Los Angeles.

EPA also reviews and comments on new highway aid projects as part of its review of environmental impact statements under the National Evnironmental Policy Act (NEPA). 42 U.S.C. 4321-4347.

Aircraft emissions. Testimony at every hearing urged some additional controls on emissions from aircraft. Some witnesses, including the California State Air Resources Board, believed that aircraft should be required to reduce emissions by the same amount as automobiles. Witnesses also suggested that if safety factors prevent this amount of emission reduction, that controls be placed on the operation of aircraft. Since restrictions are being placed on the operation of automobiles and possibly motorcycles, witnesses stated that equity considerations justified extending operational controls to aircraft: They suggested that this could be done through changing schedules to permit only full or nearly full planes to take off.

Aircraft emissions represent a significant portion of present emissions, and will become increasingly important as automobile-emitted pollutants decrease. The original transportation control proposal stated that emissions from aircraft engines in 1977 were expected to be somewhat less than the emissions projected by using current emission factors (EPA promulgated aircraft emission regulations in the July 17, 1973, FEDERAL REGISTER (38 FR 19088)). This reduction is due to lower-emission engines that are expected to replace and supplement engines presently in use. Although a reduction is anticipated, the emissions from aircraft are still quite significant. For example, aircraft emissions in San Francisco are projected to account for 34 tons/day of reactive hydrocarbons in 1977. Total allowable emissions of reactive hydrocarbons from all sources must be less than 125 tons/day if the national standard for oxidants is to be

achieved. This plan will reduce emissions to 198 tons/day without gasoline rationing. Aircraft emissions, therefore, will account for 17 percent of the anticipated emissions in 1977.

The EPA believes that the aircraft industry and airlines should continue to promote and, if possible, accelerate the development of engines with lower emission rates, and investigate the possibility of modifying current in-use aircraft engines to reduce emissions. The EPA will continue to assess the feasibility of such controls, and work closely with the Federal Aviation Administration (FAA).

Further reductions in aircraft emissions beyond those that currently effective Federal regulations will provide may be possible through a variety of means. First, EPA has under study the possibility of controlling ground operations at major airports in order to reduce emissions from taxiing airplanes (37 FR 26502, December 12, 1972). Second, portions of the legislative history of the Clean Air Act Amendments of 1970 support the position that States, as part of their implementation plans, can both control such ground operations and also limit the number of flights to given airports. A limitation on the number of flights by a local government acting in its proprietary capacity as the owner of an airport would also appear proper. See City of Burbank v. Lockheed Air Terminal, Inc., 93 S. Ct. 1854 (1973).

Bicycle usage. America is experiencing an unprecedented boom in bicycle sales and usage. In 1972 bicycles outsold automobiles, 13 million to 11 million. Bicycle use has doubled in the last 10 years, to approximately 80 million users now.

A preliminary analysis by EPA suggests that increased use of bicycles in urban commuting could reduce auto vehicle miles traveled by as much as 3 percent in areas particularly amenable to bicycle travel.

Public comment received concerning bicycle usage indicated a growing enthusiasm for using the bicycle as a form of transportation particularly suitable for use in commuting to park-and-ride facilities (such as BART stations in the San Francisco Bay Area). The major dis-

incentives to cycling are: High accident rates, exposure to auto pollutants, high bicycle theft rates, and insufficient support facilities. The latter problem tends to cause the previous three.

Such problems could be greatly reduced through better support facilities, segregated bikeways and secure parking arrangements. In addition, such facilities would further promote bicycle usage by improving the convenience of this mode of transportation. Indeed, the ultimate development would be to integrate the bicycle mode with mass transit through parking facilities designed to provide a "feeder" function.

Since 1971, the Department of Transportation (DOT) has been the leader in promoting bicycle use. DOT has allowed States to fund bikeways along federally funded roads using trust fund monies.

In terms of new legislation, the most promising development is the latest amendment of the Federal Aid to Highways Act of 1973 (Pub. L. 93-87). The bikeway section of the Act authorizes $120 million of trust fund monies to be used for bikeway construction over the next 3 years.

The EPA supports vigorous State and local programs providing for the safe and efficient use of bicycles.

Air quality baseline. Testimony was received relative to the method of calculating the emission reductions necessary for attainment of the photochemical oxidant standard. In response to that testimony, the EPA has developed a substantiating methodology which validated the amount of emission reductions necessary. A discussion of this method, titled "Methodology for Determining the Base Year Oxidant Level" will be available shortly from the EPA Region IX office. The resultant calculations based on 3 years (1969-1971) of hourly oxidant data from several localities in each AQCR, showed that the statistically based values varied not more than 0.03 ppm from the maximum values used as the air quality baseline (plus or minus 8 percent). Thus, no substantial change has occurred in the air quality improvement that is necessary. Table 2 compares these statistically based values with the design values used in the plan.

TABLE 2.—COMPARISON OF EXPECTED ANNUAL MAXIMUM 1-HOUR OXIDANT CONCENTRATIONS WITH ACTUAL VALUES USED IN ROLLBACK CALCULATIONS (PPM)

Region	Statistically projected (maximum)	Actually observed (maximum)
Metropolitan Los Angeles	0.60	0.62
San Francisco Bay Area	.33	.36
San Diego	.30	.32
Sacramento Valley	.25	.24
San Joaquin Valley	.26	.24

GENERAL DISCUSSION OF THIS PROMULGATION

This section of the Preamble discusses the pollution control measures that are being applied generally in this plan, why they were chosen, and the respects in which they differ from the measures in the proposal. The measures are classified under three headings: "Stationary Source Controls", "Hardware Controls for Vehicles", and "VMT Reduction Measures".

STATIONARY SOURCE CONTROLS

For a variety of reasons, EPA looked first to the reductions in emissions that might be achieved by further control of stationary sources. The states and EPA have had significant experience in enforcing similar measures. It can be predicted with confidence that none of these measures will cause any noticeable economic or social disruption even though some burden on individuals may result from them.

Control of degreasing operations. The control of degreasing operations regulation is changed from the proposed regulation in the July 16, 1973, FEDERAL REGISTER to reflect the need for continued use of certain degreasing solvents. The control approach in this final regulation

does not ban any particular degreasing solvent. The regulation instead either requires that the discharge be reduced by 85 percent or else requires that the solvent meet a volume composition requirement; it allows no exemption on the basis of the amount or rate of emissions. This regulation is neither to be construed as allowing any lessening of emission reduction requirements specified in any other EPA or EPA-approved rules, nor as negating certain specified allowances or privileges otherwise allowed in the rules.

Control of dry cleaning solvent vapor losses. The control of dry cleaning solvent vapor losses regulation is changed from a similar proposed regulation in the July 16, 1973, FEDERAL REGISTER. The requirements for vapor removal efficiency and an implementation date now reflect the apparent difficulty encountered in the most likely candidate process for removing the reactive organic vapors encountered in dry cleaning processes. In addition, a volume cut-off point of 4 percent reactive organic material was introduced to allow for tolerances in dry cleaning solvent compositions.

Gasoline marketing controls. The gasoline transfer vapor control regulation and the control of evaporative losses from the filling of vehicular tanks regulation were changed from the proposed regulations in the July 16, 1973, FEDERAL REGISTER to reflect more recent technical considerations and also the testimony received at the EPA hearings on the proposed transportation control plan. EPA technical staff has indicated that, because of equipment development problems, a time extension should be given for the installation of systems for the control of evaporative losses from the filling of vehicular tanks; this determination is reflected in the final regulations. It is also EPA's present position not to require the installation of gasoline vapor adsorption or refrigeration-condensation systems because of present equipment development and supply uncertainties. Therefore, the control efficiency in both Sections was lowered from 95 percent to 90 percent, so that the installation of vapor balance or vapor return systems can meet the requirements of this rule in

the short-term and more elaborate systems can be installed at a later date. However, it is the opinion of EPA that adsorption and refrigeration-condensation systems will be developed and readily available in the near future, and for this reason, a provision is made that any vapor balance or vapor return system be amendable to add-on retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system. These more advanced and sophisticated types of vapor removal systems are being developed by industry primarily as a result of stringent gasoline vapor loss control regulations promulgated by San Diego County and by the San Francisco Bay Area Air Pollution Control District. EPA approves and encourages these stringent control regulations and tactics, and supports such vigorous emission control approaches consistent with technology and development considerations.

Testimony was given to EPA that extreme hardship would occur to certain gasoline distributors if small delivery vehicles and certain bulk terminals were required to retrofit with vapor balance or return systems. Taking this into account, EPA has granted an additional year before such retrofit would be required on delivery vehicle compartments that have capacities of 1,000 gallons or less and also certain bulk terminals so that the problem areas can be further analyzed and documented or resolved.

Organic solvents. The organic solvent usage regulations and the metal surface coating thinner and reducer composition regulations are modifications of the two proposed organic solvent usage regulations found in the July 16, 1973, FEDERAL REGISTER. The implementation date for the 3,000 pound limit restriction in the organic solvent usage regulations has been extended from 1974 to 1976 to reflect the need for lead time required by industry to comply with this restriction. In the high solids and water base incentive portions of the solvent usage rules, an allowance was granted to qualify for exemption presently installed equipment in which solvent comes into contact with flame. The incentive for the use of high solids materials has been liberalized by raising the allowable organic content from 5 percent to 30 percent; this is then

lowered to 20 percent in 1977. Two 8-carbon aromatic hydrocarbons (phenyl acetate and methyl benzoate) were deleted from the photochemically reactive classification, reflecting the results of recent reactivity studies and the guidance presented in the August 14 and November 25, 1971, FEDERAL REGISTERS.

The compliance date for requirements for architectural coatings and their use has been extended to January 1, 1975, to allow suppliers and distributors of these coatings to comply in an orderly manner without severe economic penalties. The special control requirements for metal object surface coatings are no longer in the organic solvent usage regulations, but are now found in a modified form in the section entitled "Metal Surface Coating Thinner and Reducer Composition". This section will result in a significant improvement in organic emissions in metal surface coating operations. Representatives of the paint and coatings industry have expressed a willingness to cooperate in reformulating basic paint compositions so that total solvent composition in the paint, when diluted with solvent thinners and reducers for actual metal surface application purposes, will conform to paragraph (k) of § 52.254 so as to be defined as non-photochemically reactive. After some additional study, EPA expects to propose regulations in the near future to effect a lowering in the reactivity of metal surface coating paint and coatings compositions, after dilution with organic thinners and reducers.

During the course of investigating the use and the effect of certain organic solvent usage rules now in effect in the San Diego, Los Angeles, and San Francisco Regions, which are similar to § 52.254, it appeared that certain parts of § 52.254 deserved reconsideration in terms of eliminating organic emission allowances. This became apparent in terms of a present allowance for uncontrolled organic emissions of up to 40 pounds in any day or 8 pounds in any hour from individual sources. This allowance, for instance, resulted in virtually all automobile body paint refinishing-repair operations neither being required to control emissions nor required to use paints whose compositions meet the non-photochemically reactive composition requirements of § 52.254. EPA will contact the State and local air pollution control districts to elicit comment and further insight into the scope of his general problem, with the goal of proposing additional regulations for the control of stationary source organic emissions.

HARDWARE CONTROLS FOR VEHICLE RETROFITS

Comments were received on the feasibility of requiring retrofit emission control devices on existing automobiles. Based on the comments received, the EPA position on retrofits has not changed from the proposed regulations.

Catalytic converters will still be required by 1977 on all light-duty vehicles (which include light-duty trucks) that can run on the octane levels of unleaded gasoline that will be available at that time. Information available to the Administrator indicates that such retrofits are feasible on light-duty trucks and thus a regulation providing for such retrofits is being promulgated.

The California nitrogen oxide, hydrocarbon, and carbon monoxide reduction device program for used cars will be expanded as proposed in the original regulations. Presently available devices basically consist of a controlled vacuum spark advance disconnect. The EPA regulation requires application of the State's present program for 1955 through 1965 model year vehicles to the Sacramento and San Joaquin Regions. The present State program exempts these regions from this retrofit program.

Inspection/maintenance programs. Considerable reductions in motor vehicle emissions can be achieved by requiring all vehicles in an area to be tested annually for emissions, failing those emitting pollutants that exceed a certain level, and requiring maintenance on those that fail in order to bring them into compliance. This process is called "inspection and maintenance" throughout this discussion.

Three different types of tests are possible. The car can be tested while running in gear on a treadmill-like device called a "dynamometer" (a "loaded test"); it can

be tested while running in neutral (an "idle test"); or certain emission-related engine components can simply be examined to make sure they are in good working order ("parameter" inspection). A loaded test is the most effective and most expensive; parameter inspection is the least effective and least expensive. Since an inspection and maintenance program cannot be expected to achieve maximum effectiveness in reducing emissions unless a loaded test is adopted, EPA is requiring its adoption.

The State of California is proceeding with an inspection/maintenance system that will result in emission reductions. This plan will require that the State's inspection/maintenance system be expanded to require mandatory inspection and maintenance of all light-duty motor vehicles in Regions covered by this proposal. The inspection and maintenance program recently adopted by the State may be applicable to light-duty vehicles only in the Los Angeles Region. EPA has determined that extension of inspection/maintenance program to light-duty trucks is technically and administratively feasible because they are in many respects similar to light-duty vehicles.

Gaseous fuel usage. Using compressed natural gas (CNG) and liquified petroleum gas (LPG) for the fueling of internal combustion engines significantly reduces the emissions those same engines would produce if gasoline powered. The EPA encourages the use of gaseous fuel, particularly LPG, for fleet vehicles.

The Agency believes that those automobiles unable to run on unleaded gasoline and, therefore, unable to be retrofitted with catalyst exhaust systems, should possibly be converted to gaseous fuels. Because of the distribution problems and the anticipated effectiveness of catalytic mufflers, however, the Agency is not requiring gaseous fuel conversion. Nevertheless, those fleet owners and individual auto owners who have installed such conversion systems before the effective date of the catalyst retrofit program will be exempt from the requirements of that program.

Transit agencies should consider the advantages of gaseous fueling of buses rather than either gasoline or diesel power systems, prior to the purchase of these vehicles.

VMT REDUCTION MEASURES

Motorcycle controls. In the July 16, 1973, proposal, regulations were included that would have restricted 2-stroke motorcycle operation during the "smog season" in California. This action was taken due to the very high pollution potential of the 2-stroke motorcycle. The average 2-stroke motorcycle emits approximately 31 times as much exhaust hydrocarbons per mile as a new California 1975 automobile will emit. Consequently, prevention of increases in the number of motorcycles was proposed to prevent counter-productive shifts from automobiles to motorcycles as a result of other elements of the control strategy. The Agency has evaluated the feasibility of establishing emission standards for new motorcycles and is currently evaluating the availability of motorcycle emission control technology for existing motorcycles to reduce emissions.

Based upon testimony presented by motorcycle manufacturers, testimony presented by motorcycle trade associations, and an independent analysis by the Environmental Protection Agency, it appears that significant reductions in the emissions from new motorcycles can be achieved.

Accordingly, the EPA is no longer requiring an unconditional ban on motorcycle operations. Instead, the ban regulation has been rewritten to provide that it will not go into effect in the event that nationally applicable Federal regulations are promulgated that require at least a 50 percent reduction of 2-stroke motorcycle hydrocarbon emissions by 1976 and conformity with the 1976 hydrocarbon automobile standards by 1979 for both 2-stroke and 4-stroke vehicles. Significant reductions for carbon monoxide will also be required.

The Administrator will soon issue an Advance Notice of Proposed Rulemaking for emission standards for new motorcycles.

Bus and carpool lanes. The original proposal for the establishment of bus and carpool lanes has been retained in substance. However, the method of selecting the lanes has been changed from one based on the number of lanes in the road to one looking to the establishment of a coherent network of such lanes along transportation corridors. In some regions, pilot programs will be conducted to discover the best way to implement a full-scale program. EPA recognizes that in some cases, measures such as freeway metering or the conversion of entire streets to bus and carpool use may prove preferable to such lanes. In every case, however, the establishment of bus/carpool lanes will proceed on the schedule specified unless and until other measures of equivalent stringency can be substituted for them.

Parking management program. The proposal for review of new commercial parking facilities has been retained in essence. It has been modified, however, to allow a wider range of variables to be considered. In essence, the regulation promulgated today would require the obtaining of a permit before commencing the construction of any facility of 50 or more spaces. A permit will only be granted after it is determined that the parking facility will not have an effect inconsistent with a plan's VMT reduction goals or cause a violation of any ambient air quality standard.

The promulgated regulations will encourage as an alternative to one-by-one review of new facilities that the appropriate local government submit to the Administrator a plan outlining the locally planned management of parking facilities for the next 5 years. If a submittal is made that shows to the satisfaction of the EPA that such planned parking management does not conflict with the California State Implementation Plan, the EPA will no longer review each proposed new parking facility individually. Such review by either the State or EPA will be consistent with. The previously discussed indirect sources regulations.

Control of existing parking spaces; surcharge on parking. The proposal that spaces in public parking facilities be reduced by 20 percent drew almost universal adverse comment during this rulemaking proceeding. At the same time, the use of regulatory fees to discourage pollution-causing activities was widely supported. In particular the use of fees to control parking was metnioned.

EPA also believes that the use of such parking fees has much to recommend as a matter of policy. Accordingly, EPA is not promulgating a reduction in publicly owned parking spaces and is instead promulgating a regulatory fee to increase the price of parking in the three most heavily polluted AQCR's. Both the regulation's graphic coverage and the amount of the surcharge will be increased in three phases. At least 50 percent of the revenues will be used for mass transit.

In addition, testimony at the public hearings pointed out that the provision of parking spaces by employers for their employees tends to encourage employees to drive to their place of employment rather than use carpools or mass transit. Such employers may therefore be regulated as "indirect sources" of air pollution as that term is defined in the General Preamble. At the same time, individual employers are particularly well equipped to establish and administer programs to reduce the dependence of their employees on the single-passenger automobile. Accordingly, as a further replacement for the proposed reduction in public parking spaces, a regulation is being promulgated that provides for employer-paid mass transit fares and special parking privileges to those who travel by carpool. It also provides for a surcharge over and above the commercial parking rate to be assessed on those who continue to commute by single-passenger automobile. The revenues from this surcharge will be used by each employer to promote use of mass transit.

This regulation will be implemented in stages, the first stage applicable to employers who provide more than 700 employee parking spaces, and the second to those who provide more than 70.

The purpose of this regulation is to effect sizeable reductions in VMT caused by commuting, which ap-

pears to be the mode of travel most easily diverted to mass transit and carpools.

This regulation also contains a provision restricting the enforcement of local zoning or land-use laws that require an employer to provide a given number of parking spaces for a given number of employees.

EPA was reluctant to interfere with local land-use decisions even to the limited extent that today's regulations provide. However, in light of the relationship among parking spaces, vehicle miles traveled, and air quality, a requirement that employers must provide a certain number of parking spaces could not be squared with the objectives of the Clean Air Act.

It should be emphasized, however, that the Agency recognizes that many aspects of the surcharge and employer incentive regulations are new and indeed unprecedented. They are being promulgated because of the requirement of the court order that all measures necessary to move towards the standards be included in the plans as promulgated. Even though promulgation was necessary to make these regulations legally effective, the Agency particularly invites public comment on them during the next 30 days. At the conclusion of that period, and after comments have been evaluated, the regulations will be revised if revision is appropriate in the light of the comments.

EPA also recommends that local jurisdictions consider whether present legal requirements unduly hamper shifts away from the present dependence on automobiles. Regulations such as those which require that any bus service obtain a certificate of public convenience and necessity before commencing operations may significantly discourage increased public transit service.

Carpooling systems. In all Regions, EPA is requiring the establishment of carpool matching systems to enable persons with similar daily travel patterns to make contact with each other and arrange carpools. In some regions, pilot programs will be established prior to establishment of the system throughout the region. Such a measure is necessary if the restraints on individual vehicle use contained in this plan are to have the desired effect of reducing VMT.

The EPA Regional Office in San Francisco has contacted various Federal agencies in order to facilitate the implementation of the pilot programs called for in the regulation. The Regional Office has experienced initial success in its first contacts, and this effort is continuing. A detailed guide for the operation of a bus/carpool matching program, along with a discussion of a number of successful programs in operation in many areas of the country are discussed in a U.S. Department of Transportation Federal Highway Administration Publication "Carpool and Buspool Matching Guide (Second Edition)", May 1973. This report discusses the considerations involved in a successful program such as public information, incentives, data processing, and a continuing updating of the service, and is an excellent guide and reference for conducting such a program.

The EPA believes that this approach to reducing vehicle miles traveled is an excellent short-term strategy. It involves a minimum investment and deserves the active promotion and support of government and industry.

Gasoline limitations. As noted above, the Clean Air Act leaves the Administrator no alternative to promulgating all measures necessary to meet the standards by 1977. Accordingly, the plan also contains a provision for reducing the supply of gasoline to the extent necessary to ensure attainment of the standards by that date. Such a measure, if implemented, would achieve the air quality standards. However, the EPA does not believe that massive gasoline rationing is either socially acceptable or enforceable, and will work toward alleviating the necessity for such drastic control in 1977.

State, local, and Federal implementation of control measures. In order to preserve the intent of the Clean Air Act that pollution problems be dealt with primarily at the local level, the Agency is requiring that State and local governments take action wherever possible and will involve the Federal Government only in the direct implementation of some programs. State and/or locally enforced, Federally promulgated requirements include:

Retrofit programs; parking surcharge; bus and carpool lanes; and inspection and maintenance. Federally operated programs will be: motorcycle controls, gasoline limitations, and a bus/carpool incentive regulation directed at major employers.

State and Regional Responsibilities

The State of California has recently redesignated some of the responsibilities of the California Air Resources Board (ARB). The ARB has the responsibility of developing and submitting implementation plans to achieve State and Federal air quality standards. When these plans require transportation controls that are not hardware devices, the California Department of Transportation (Cal/Trans) is responsible for the planning and development of these transportation control measures. The California Department of Transportation has informed EPA that it will submit alternative transportation plans for each AQCR based on the findings of State and local task forces.

State/local task forces. State/local task forces were formed in all AQCRs covered by this promulgation to develop alternatives to the EPA-proposed control measures, with the goal of developing draft plans by mid-October, 1973. Meetings were held between each task force and EPA representatives to discuss potential alternatives for inclusion in the EPA control plan promulgated for each AQCR. Although the EPA promulgations are not wholly comprised of recommendations of the task forces, EPA hopes that they reflect reasonable and locally acceptable measures to improve air quality in each AQCR. EPA also hopes that the recommended alternative plans being developed by the task forces later this fall will be approvable by EPA and will allow EPA to rescind its regulations.

The membership of the task forces follows:

Los Angeles. District VII Cal/Trans, California Air Resources Board, City and County of Los Angeles, California Highway Patrol, Southern California Association of Governments, Los Angeles County Air Pollution Control District, Southern California Rapid Transit District, South Coast Air Basin Coordinating Council, and the League of California Cities.

San Francisco. District IV Cal/Trans, California Air Resources Board, San Francisco Bay Area Metropolitan Transportation Commission, Association of Bay Area Governments, and the Bay Area Air Pollution Control District.

San Diego. District XI Cal/Trans, California Air Resources Board, San Diego Comprehensive Planning Organization (CPO), San Diego County Office of Environmental Management, San Diego County Air Pollution Control District, City of San Diego, the San Diego Unified Port District, and San Diego Transit Corporation.

San Joaquin Valley. Cal/Trans, California Air Resources Board, Regional Fresno Community Council, local transit officials, and county, city, and governmental bodies, including the Fresno County Air Pollution Control District.

Sacramento Valley. Cal/Trans, California Air Resources Board; Sacramento Regional Area Planning Commission, Sacramento and Yolo Solano Air Pollution Districts, county, city, and regional governmental bodies, and Sacramento Regional Transit District.

Social and Economic Impact of the Controls

A full analysis of the social and economic effects of the transportation control plans has not been made, because of the lack of time and because of the innate complexity of the problem. Many factors, such as the willingness of the public to use mass transit instead of the automobile for some trips, cannot be predicted. However, preliminary analysis has outlined some general trends and impacts.

The impact of stationary source controls is most easily predictable. Where manufacturing and marketing of certain goods and services require control devices or new distribution techniques, the cost of the devices and techniques will probably be passed on to the consumer. The requirements for vapor recovery in gasoline marketing will likely result in conservation of energy since gasoline, which previously was lost as vapor, will be recovered and used.

The program requiring inspection and mandatory maintenance of light-duty vehicles will involve two kinds of costs: (1) An inspection fee of about $2 for all vehicle owners; and (2) the cost of the required maintenance for vehicles failing the inspection, about $20 to $30. These costs are low, but they may fall most heavily on the owners of older cars, and these tend to be from the lower income groups. The cost of retrofit devices will vary according to the device required. Vacuum spark advance disconnect (VSAD) and exhaust as recirculation devices can be purchased and installed for $20 to $35, and an oxidizing catalyst will cost approximately $150. Again, the cost of retrofit devices will fall most heavily on the lower income groups, since they tend to own older, less-controlled automobiles. The cost of both inspection/maintenance and retrofit can be subsidized by State or local government through systems of taxing or fees. In the absence of subsidies or other relief, lower income groups will bear a disproportionate part of the burden of these costs.

Many control measures are designed to provide incentives for the use of mass transit. Preferential treatment of buses and carpools on freeways and city streets, incentives to employees to use mass transit, financing for mass transit, and management of parking facilities should make the use of buses and carpools more easy and attractive. This would result in a more balanced system of transportation, available to the entire public. It will necessarily cause some inconvenience and delay in the driving of private automobiles until the public shifts some trips from automobiles to mass transit. Increased

ridership has been found to be a vital factor in improved bus service, and it is hoped that the regulations promoting the use of mass transit will lead to an improved system, which in turn is even more attractive. Improvements in public transportation will most benefit the poor, the old, and the young, so-called "captive" riders, although commuters should also benefit from preferential treatment of buses and carpools on highways and city streets. Improved public transit may also uncover and serve a latent trip demand in the present users of public transit.

It is also important to reiterate that the enforcement of the transportation control regulations will remove the present and future danger to public health from photochemical smog and carbon monoxide. This will result in better health among the affected population, greater human productivity because of elimination of some sick-days, and protection of the health of marginal groups.

Study of social and economic impact on San Diego AQCR. EPA has recently contracted the firm of Peat, Marwick, Mitchell, and Company of Washington, D.C., to conduct an initial socioeconomic impact study of the EPA-promulgated regulations for the San Diego Air Quality Control Region. The study will assess in particular the several transportation control measures initially promulgated and then project the socioeconomic effects of such controls, if extended into additional phases. In addition to providing specific information on the San Diego plan, this study should provide a systematic methodology for assessing socioeconomic impacts in the other metropolitan areas of the country requiring transportation controls to meet air quality standards. Subcontractor support will be provided by the San Diego Comprehensive Planning Organization (CPO). In addition to CPO, coordination and technical review will be provided by the San Diego County Office of Environmental Management and the San Diego County Air Pollution Control District.

Public information grants. EPA realizes that no control program can work without public understanding and public support. The Agency is most anxious that the

public be aware of the real public health need for transportation controls, and aware of the alternatives to the private automobile. It also desires strongly that the public have readily available routes of communication to EPA, and that they present their criticism, suggestions, and desires.

Besides its normal public affairs activities, publications, and contacts with groups and individuals, EPA is sponsoring a special public information campaign on the transportation controls. In this campaign, local community-based and civic groups will provide the public with information on the controls themselves, on the options communities have to ease the impact of and the need for the controls, and on the alternatives to the automobile, particularly mass transit. The local groups will work through both the media and through community meetings and involvement.

Those interested in obtaining information from these groups or participating in their efforts should contact the following groups:

Fresno: The Fresno Community Council, 208 Crocker Citizen's Bank Building, Fresno, Calif. 93721.

Los Angeles: The Clean Air Constituency, 1670 Beverly Boulevard, Los Angeles, Calif. 90026.

Sacramento: The League of Women Voters, 3140 "J" Street, Sacramento, Calif. 95816.

San Diego: Integrated, Regional Environmental Management, 1600 Pacific Highway, San Diego, Calif. 92101.

San Francisco: The League of Women Voters, Hotel Claremont, Berkeley, Calif. 94705.

Southeast Desert Intrastate Air Quality Control Region Control Strategy

The Southeast Desert Intrastate Region, also known as the Southeast Desert Air Basin, is located in the southeast portion of the State of California. It is composed of all of Imperial County, the eastern portions of San Bernardino, Riverside, Kern, and San Diego Counties, and the northern portions of Los Angeles County. Geographically, this Region covers 33,600 square miles and is separated from the coastal regions by a series of mountain ranges. Elevations vary from 235 feet below sea level to 11,000 feet above sea level.

Air quality monitoring stations in the Region and in particular those in the Coachella Valley have recorded photochemical oxidant levels up to five times the national ambient air quality standards. The overall 1971 maximum readings in the Region are 0.38 part per million oxidants (recorded in Palm Springs) and 17 parts per million carbon monoxide (recorded in Indio). Using simple rollback and assuming a linear relationship between reactive hydrocarbons and oxidant concentrations, the reductions required to achieve the national standards are 70 percent of the reactive hydrocarbons and 47 percent of the carbon monoxide.

Significant data support the hypothesis that air pollution from the Metropolitan Los Angeles Intrastate Region is transported to and contributes substantially to high oxidant levels in the desert areas east of Los Angeles. It is expected that the emission controls proposed by the Administrator for the Metropolitan Los Angeles Region, in addition to State and local emission controls, will provide for attainment of the carbon monoxide and photochemical oxidant standards in the Southeast Desert Region by May 31, 1977. Any delay experienced in attaining the oxidant and carbon monoxide standards in the Los Angeles Region will cause a corresponding delay in attainment of the standards in the Southeast Desert Region.

A discussion of studies relating the air quality in the Southeast Desert Region to that in the Los Angeles Region can be found in "Air Quality Implementation Plan Development for Critical California Air Quality Control Regions: Summary Report," prepared under contract for the Environmental Protection Agency and available from the EPA Region IX office at 100 California Street, San Francisco, Califorina 94111.

Because of the dependence of air quality in the Southeast Desert Region upon that in the Los Angeles Region, and because of the very small impact that emissions in the Southeast Desert Region have upon air quality there, no transportation controls are promulgated for this Region at present.

Metropolitan Los Angeles Intrastate Air Quality Control Region Control Strategy

The Metropolitan Los Angeles Air Quality Control Region, also known as the South Coast Air Basin, covers a major portion of Southern California, encompassing all of Orange and Ventura Counties, the western portion of Riverside County, the southwest portion of San Bernardino County, the southern coastal portion of Santa Barbara County, and all but the northeastern corner of Los Angeles County. The air quality problems of the region are, in many ways, unique. The region is geographically and meteorologically closed. The encircling mountains and frequent inversions, hold in pollutants, and the Southern California climate provides ample sunshine to aid the formation of photochemical smog. The automobile is by far the dominant mode of transportation. In 1972 the South Coast Air Basin contained over 10 million persons and nearly 6 million motor vehicles.

This extremely high automobile population is combined with a low-density, sprawling pattern of development that distributes the population over the entire area of the basin, linked by a complex network of freeways. Moreover, the area is still growing. The current rate of population growth is now a 1.7 percent increase per year. However, the automobile population grows more rapidly, at 3 percent to 4 percent per year, and gasoline consumption grows even more quickly, at 4.5 percent per year.

This AQCR has the worst photochemical oxidant problem in the United States. In 1970, the national standard for photochemical oxidant was exceeded on over 250 days in the South Coast Basin. The high reading in the Basin was over 7 times the national standard, and during 1970

a full 10 percent of the oxidant readings taken in the Basin were 0.40 ppm (five times the national standard) or higher.

In 1970, a high reading for photochemical oxidants of 0.62 ppm was taken at Riverside, and this reading is being used for air planning purposes.

Testimony was received that was critical of the procedures that EPA employed in selecting the maximum 1-hour reading for use in the rollback calculations. In response, EPA evaluated 3 years of air quality data at several locations within the South Coast Intrastate AQCR and found that the statistically evaluated maximum 1-hour value was 0.60 ppm. This value was only 0.02 ppm different from the value used to calculate the emissions reductions tabulated in the original proposal, and therefore has little or no effect on the VMT reductions required. A high carbon monoxide 8-hour average reading of 41 ppm was taken in 1970, and that reading is being used for air planning purposes. The overwhelming majority of the hydrocarbon and carbon monoxide emissions in the Basin are from motor vehicles. Besides stringent controls on stationary sources and requirements for emission controls on motor vehicles, a reduction in vehicle miles traveled (VMT) by the entire population of automobiles will be necessary to meet the oxidant standard in 1977. It should be pointed out that EPA estimates that some of the emission control strategies for motor vehicles, e.g., installation of catalytic mufflers, cannot be fully carried out before 1977.

Discussion of final EPA control strategy for metropolitan Los Angeles AQCR. The control strategy for the Los Angeles Region consists of various stationary and mobile source controls. Many of the stationary source controls are the same or slightly modified versions of the regulations proposed in the July 2, 1973, Federal Register. The transportation control measures have been modified considerably. The measures reflect testimony received at the August 9-10, 1973, public hearings in Los Angeles and written comments received on the plan. Additionally, various State and/or locally implemented controls are

noted as part of the total strategy, but not claimed as part of the EPA plan reductions. EPA will carefully assess the reductions in VMT and improvements in air quality obtained from the various strategies and control regulations, and recommend additional or revised strategies as needed.

The requirements for bus/carpool lanes and review of parking facilities are also being promulgated essentially as proposed, although significant changes in form have been made. Approximately 184 miles of traffic lanes, in two phases, will eventually be set aside for buses and carpools under this promulgation. Measures to require employers to discourage commuting by single-passenger automobiles, and to require the establishment of a regional carpooling system, have been added. The proposal for a reduction in public parking spaces has been dropped, and a regulatory fee to increase the price of parking has been added. The provision for gasoline limitations prior to 1977 has been eliminated. The ban on motorcycles during the smog season will not take effect as promulgated if emission standards for new motorcycles are established.

As an initial phase, some 65 miles on 3 freeway corridors have been designed for establishment of exclusive bus and carpool lanes, and another 12 miles of surface streets have been designated for the same purpose. The choice of specific routes was made at the recommendation of the Los Angeles Task Force and other testimony received at the public hearing, discussed earlier.

The proposal to require a bus/carpool computer matching and promotion system by March, 1974, has been modified to require a phased computer matching program that will initially involve employees in the Los Angeles City CBD and eventually expand to include all employees in the Region.

The control tactics (including such details as the emission control reduction factors and the population fraction affected by the tactics), and other data needed to calculate the emission inventory outlined in Table 3 are outlined or referenced in the appendix of the Technical Support Document for the Metropolitan Los Angeles Intrastate Air Quality Regional Transportation Control

Plan—Final Promulgation, available from the EPA, Region IX Office at 100 California Street, San Francisco, California 94111, and at the Freedom of Information Center, EPA, 401 M Street SW., Washington, D.C. 20460.

Many of the measures EPA and the local task force have designed to reduce VMT are untried. EPA has gathered the available data and has funded several studies and analyses of the VMT reductions possible from various transportation control; based upon the available data, EPA has made rough estimates of the VMT reductions that can reasonably be expected from the EPA and local measures. The EPA strategy for the Metropolitan Los Angeles AQCR should yield reductions of between 14 and 31 percent. (These and subsequent calculations can be found in the Technical Support Document, available at the Region IX and Washington offices specified above.) It should be noted that EPA has promulgated many of the local measures and therefore the 14 to 31 percent VMT reduction reflects these task force measures. An additional VMT reduction of 3 to 12 percent would result from other task force recommended measures. Based on present data, the remaining VMT reduction can only be achieved by means such as gas rationing.

TABLE 3.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN THE LOS ANGELES AQCR IN 1977

Emission source and control measures	Emissions and reductions of RHC, tons/days	Percent reduction per measure
Stationary source emissions in 1977 without proposed control strategy	236	
Expected reductions:		
1. Vapor recovery at gasoline stations	—132	18.0

TABLE 3.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN THE LOS ANGELES AQCR IN 1977—Continued

Emission source and control measures	Emissions and reductions of RHC, tons/day	Percent reduction per measure
2. Dry cleaning solvent controls and degreasing solvent controls	—32	4.3
Stationary emissions remaining	72	
Mobile source emissions in 1977 without proposed control strategy	613	
Expected reductions:		
1. Reductions from only EPA-promulgated VMT control strategies assuming a 14% VMT reduction [1]	—61	8.3
2. Catalyst retrofit, and mandatory inspection and maintenance	—103	14.0
3. Motorcycle limitations	—24	3.3
4. VMT reductions and evaporative emission reductions necessary from additional control strategies to be implemented in 1977	—384	52.1
Mobile emissions remaining	41	
Total emissions remaining	113	
Total emissions allowable [2]	112	

[1] Using optimistic assumption and estimations of both EPA and local VMT reduction measures, a total reduction of 43 percent VMT, or 187 tons/day could occur.

[2] Based on the "Schuck Model" which is described in the "Los Angeles Technical Support Document."

Locally implemented controls. A task force, discussed elsewhere in this preamble, was formed in the Los Angeles area to develop alternatives to the EPA plan. The task force has since made several preliminary recommendations for local actions that could reduce emissions both by developing a better, more widely used public transportation system, and by smoothing and speeding the flow of automobile traffic. The Task Force report states that a long-range and a short-range plan to expand public transit services and facilities are being drawn up now by member agencies of the task force. EPA supports the goals of these plans: To provide an alternate form of transportation to absorb trips diverted from the automobile, and to develop a more balanced transportation system in the South Coast Basin. We expect to cooperate closely with the task force members in drawing up these plans.

The task force recommended a series of measures to speed the flow of traffic and avoid the bottlenecks and stop-and-go driving that are both polluting and wasteful of energy. These measures include: Automated and interconnected traffic signals; freeway ramp metering; expanded fringe park-and-ride facilities; and other traffic flow improvements. The task force believes these systems can speed traffic, cut emissions, and conserve energy.

The task force recommendations have not been adopted as enforceable regulations and submitted to EPA as part of the California Air Quality Standards and Implementation Plan. However, EPA encourages the adoption submission of these recommendations as part of the State plan.

SACRAMENTO VALLEY INTRASTATE AIR QUALITY CONTROL REGION CONTROL STRATEGY

The Sacremento Valley Intrastate Air Quality Control Region, also known as the Sacramento Valley Air Basin, lies in the center of Northern California, bounded on the west by the Coast Range, on the north and east by the

Cascade. Range and Sierra-Nevada Range, and on the south by the San Joaquin Valley. This region is composed of portions of 15 counties. The Region contains approximately 21,300 square miles, 1.2 million people, and 840,000 motor vehicles. Air pollution control in the Region falls under the jurisdiction of the local air pollution control districts. As in the rest of the State, the local and regional organizations deal primarily with stationary source controls, leaving mobile source controls to the California Air Resources Board.

During the period 1970 to 1972, the Sacramento Valley Region experienced numerous violations of both Federal and State air quality standards. Photochemical oxidants are the predominant problem, and it appears from the limited data evaluated that the problem has increased in recent years, both in number of violations that occur and the maximum oxidant level experienced. Based on the highest or base year 1-hour maximum oxidant reading of 0.28 ppm during 1972 in Sacramento and using the proportional rollback model, a 71 percent reduction in reactive hydrocarbon emissions from 1972 base year emission levels would be required to meet the national ambient air quality standard for oxidants. (The maximum oxidant reading used was evaluated by the method described earlier in the Metropolitan Los Angeles preamble, and was found to be substantially correct).

Since the air quality levels are most severe in the southern portion of the Region, centering around Sacramento County, it appears appropriate to attempt to solve the airshed problem by developing a control strategy specifically for Sacramento County and the three counties in its immediate vicinity (Yolo, Placer, and El Dorado). In the Sacramento Valley and also the San Joaquin Valley, vast areas are sparsely populated but others are highly urbanized and have high emission densities in comparison with the rural areas. Thus, most transportation control strategies are limited to these urbanized areas.

Table 4 summarizes the effects of the promulgated control strategies.

TABLE 4. SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SACRAMENTO "REGIONAL AREA" IN 1977

Source of pollutant and control measures	Emissions and reductions tons/day of reactive hydrocarbons	Percent reductions per measure
Stationary source emissions in 1977 without control strategy	40.6	
Expected reductions:		
1. Gasoline marketing vapor recovery	—26.0	43.0
2. Surface coating improvements	—1.1	1.6
3. Dry-cleaning controls	—0.7	1.2
4. Degreasing controls	—1.9	3.2
5. State limitations on burning	—2.1	3.4
Stationary emissions remaining	8.8	
Mobile source emission in 1977 without proposed control strategy	54.1	
Expected reductions:		
1. Reductions from only EPA-promulgated VMT control strategies assuming a 5 percent VMT reduction [1]	—1.7	2.7
2. Catalyst retrofit, mandatory inspection/maintenance program, and vacuum spark advance program	—9.9	6.2

[1] Using optimistic assumptions and estimations of both EPA and local VMT reduction measures, a total reduction of 27 percent VMT, or 9.2 tons/day could occur.

TABLE 4.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SACRAMENTO "REGIONAL AREA" IN 1977—Continued

Source of pollutant and control measures	Emissions and reductions tons/day of reactive hydrocarbons	Percent reductions per measure
3. Motorcycle emission regulations	—2.0	3.3
4. VMT reductions necessary from additional control strategies to be implemented in 1977	—15.3	25.4
Mobile emissions remaining	25.2	
Total emissions remaining	34.0	
Allowable emissions to attain standards for photochemical oxidants.[1]	34.5	

[1] Based on linear rollback model.

VMT will have to be reduced by 64 percent if the national ambient air quality standard for photochemical oxidants is to be attained by 1977 in the Sacramento Valley Region.

Based upon the available data, EPA has made rough estimates of the VMT reductions that can reasonably be expected from the EPA and the local measures. The EPA strategy for the Sacramento Valley Intrastate AQCR should yield reductions of between 45 and 14 percent; the local measures should provide an additional 4 to 13 percent improvement in air quality. It should be noted that EPA has promulgated many of the locally supported measures, and therefore the 5 to 14 percent VMT reduction includes the effects of these measures.

An additional VMT reduction of 4 to 13 percent could result from additional locally implemented measures. Based on present data, the remaining reduction needed can only be achieved through more stringent measures, such as gasoline rationing, in 1977.

Discussion of final EPA control strategy for the Sacramento Valley. The control strategy for the Sacramento Valley Region consists of various stationary and mobile source controls designed to reach the photochemical oxidant standard by 1977. Many of the stationary source controls are the same, or slightly modified versions, of the regulations proposed on July 16, 1973. The transportation control measures have been modified considerably. Each of the regulations promulgated or approved is considered to be enforceable by the Agency.

The measures reflect testimony received at the August 10, 1973 public hearing in Sacramento and written comments received on the plan. Additionally, various State and/or locally implemented controls are noted as part of the total strategy to achieve the standard by 1977. EPA will carefully assess the reduction in VMT and improvements in air quality obtained from the various strategies and control regulations, and recommended additional strategies as needed between now and the 1977 legal attainment date.

The proposal to achieve a bus/carpool computer matching and promotion system by March of 1974 has been modified to require that such a system be initially established at McClellan Air Force Base in Sacramento. Upon evaluation, the system will be expanded throughout the portions of the Regions.

A "Mass Transit Priority and Planning" regulation for a four-county portion of the Sacramento Valley Region has been added to the control plan. The Sacramento Regional Area Planning Commission (SRAPC) July 1972 report "Transit Plan and Program", states that the Sacramento City "J" Street bus and traffic situation justified bus priority treatment. In addition, SRAPC reports and discusses at the meetings between EPA and the Task Force indicate that there is a near term po-

tential for mass transit priority treatment (e.g. U.S. 99 through Southern Sacramento). As a result, EPA has promulgated final regulations calling for specific action in the "J" Street situation, and a general action outline plan for mass transit priority treatment on streets and freeways.

Surcharges on public and private parking have not been imposed in the urbanized portions of the Sacramento Valley Region as they have in San Francisco, San Diego, and Los Angeles. However, the use of such a surcharge to raise revenues for mass transit is being considered by the Administrator, and written comment on this point is particularly invited.

Locally implemented strategies. The public hearing testimony, written comments, and the Sacramento Task Force indicated a wide variety of measures that could best be carried out on the local or State level. The EPA plan notes these measures as being applicable toward attainment of the oxidant standard and will encourage their implementation, although the reductions are not credited as part of the EPA plan. Furthermore, EPA will evaluate progress and success in the implementation of these and similar measures and if found necessary, promulgate additional measures to supplement them. Many of these measures will likely be contained in the anticipated revisions to the State Implementation Plan as a result of the Cal/Trans task force findings.

Major improvements to the mass transit system in Sacramento have occurred during the past year and are expected to be expanded as additional funds become available for these purposes.

A meeting between EPA and the transportation task force officials confirmed that the Sacramento Regional Transit District had initiated and is in the process of implementing an innovative and aggressive transit program. It is expected that the State of California Department of Transportation vehicle miles traveled reduction plan to be submitted to EPA will further define this program, and will allow EPA to monitor and evaluate the progress of future public mass transit program implementation, including the present and estimated future

financial commitment to mass transit. The Sacramento Regional Transit District initiated a 25¢ flat fare recently, and bus ridership has dramatically increased since that time. Express bus routes to outlying areas of the metropolitan area were established in the past year and several more will be in operation by the end of 1977. Fringe parking lots have been established and are being expanded along these routes as well as at major regional shopping centers. There are plans to place bicycle protection facilities at these fringe parking lots to allow nearby residents to bicycle to the bus stops. Bikeways are very extensive in the Sacramento area due to the flat terrain. Ridership incentive programs are being planned through an extensive public information program. Dial-A-Bus and subscription bus service will also be carefully examined. An area being seriously examined for applicability of special bus service is the route between the University of California campus at Davis and certain residential areas in the city of Sacramento, 18 miles away.

Various traffic flow improvement programs are also underway or proposed for the next 4 years in the Sacramento Region. These include a synchronized traffic signal system for major arterials, easing of traffic bottlenecks, and additional ramp metering.

A final measure that will likely be the subject of further consideration and experimentation in the next few years will be the variation of the work week to four 10-hour days, and other combinations to determine the effects of the variations on air quality and VMT. Governmental agencies will be early candidates for this program.

San Joaquin Valley Intrastate Air Quality Control Region Control Strategy

The San Joaquin Valley Intrastate Region, also known as the San Joaquin Air Basin, consists of all of the counties of Amador, Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tulare, and Tuolumne, and the western portion of Kern County.

This Region lies in the southern portion of the Central Valley and extends into the neighboring mountain slopes. It is bounded on the west by the Coastal Range, on the east and south by the Sierra-Nevada and Tehachapi Mountains, respectively, and on the north by the Sacramento Valley Intrastate Region. The Region includes 30,200 square miles of land area and had a population of over 1.6 million people in 1970. Population is growing rapidly. Although it contains 19 percent of the State's land area, the Region has only 8 percent of the State's population. National ambient air quality standards have been exceeded in seven locations in the San Joaquin Valley Region: Stockton, Fresno, Bakersfield, Modesto, Visalia, Parlier, and Five Points. The highest or base year 1-hour maximum oxidant value of .24 ppm occurred in the Region in 1971 at Modesto. The base year maximum oxidant reading used was statistically evaluated by the method described earlier in the Metropolitan Los Angeles preamble, and was found to be substantially correct. Each of the areas surrounding the cities has unique characteristics with regard to air quality, meterology, stationary sources, population distribution, and transportation; the transportation control strategy proposed herein recognizes this fact. A thorough analysis was made on Kern County (Bakersfield), Fresno County (Fresno), and San Joaquin County (Stockton). Insufficient data exist for adequate analyses of Parlier and Five Points (both in Fresno County and Modesto), but it is expected that the proposed transportation controls as applied to Fresno, Bakersfield, and Stockton areas will be adequate for attainment of the national ambient air quality standard for photochemical oxidants in these other locations as well.

Using the proportional rollback model, reductions in base year emission levels of reactive hydrocarbons of up to 67 percent (for Modesto) will be required in various counties in the Region in order to meet the air quality standards.

As an example, Table 5 shows the approximate effect that the control strategies will have in Kern County.

A 39 percent reduction in VMT is necessary by 1977 for attainment of the standards in Kern County. In

Stanislaus County a similar situation exists with a corresponding need for VMT reduction. In Fresno County, present studies indicate that a 16 percent VMT reduction by 1975 would provide for attainment of the standards. In San Joaquin County, a 32 percent VMT reduction is necessary in 1975 for attainment of the standards, but only 8 percent in 1977.

Based upon the available data, EPA made rough estimates of the VMT reductions that can reasonably be expected from the EPA and the local measures. The EPA strategy for the San Joaquin Valley Intrastate AQCR should yield reductions of between 4 and 13 percent; the local measures should provide an additional 3 to 11 percent reduction in VMT. Based on present data the remaining VMT reduction can only be achieved through more stringent means such as gas rationing in 1977.

TABLE 5.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN KERN COUNTY PORTION OF SAN JOAQUIN VALLEY REGION IN 1977

Sources and control measures	Emissions and reductions of reactive hydrocarbons, tons/day	Percent reductions per measure
Stationary source emissions in 1977 without proposed control strategy	11.3	
Expected reductions:		
1. Vapor recovery at gasoline stations	—5.8	37.2
2. Surface coating restrictions, drycleaning controls, and degreasing controls	—0.7	4.5
Stationary source emissions remaining	4.8	

TABLE 5.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN KERN COUNTY PORTION OF SAN JOAQUIN VALLEY REGION IN 1977—Continued

Sources and control measures	Emissions and reductions of reactive hydrocarbons, tons/day	Percent reductions per measure
Mobile source emissions in 1977 without the proposed control strategy	21.4	
Expected reductions:		
1. Reductions from only EPA promulgated VMT control strategies assuming a 4 percent VMT reduction [1]	—.6	3.8
2. Catalyst retrofit, expansion of State nitrogen oxides program, and mandatory inspection and maintenance	—4.0	25.0
3. Motorcycle emission regulations	—.8	5.1
4. VMT reduction necessary from additional control strategies to be implemented in 1977	—3.7	23.8
Mobile emissions remaining	12.5	
Total emissions remaining	17.3	
Allowable emissions for attainment of standards for photochemical oxidants [2]	17.2	

[1] Using optimistic assumptions and estimations of both EPA and local VMT reduction measures, a total reduction of 24 percent, or 3.6 tons/day could occur.

[2] Based on linear rollback model.

Discussion of final EPA control strategy for the San Joaquin Valley AQCR. The control strategy for the San Joaquin Valley Region consists of various stationary and mobile controls designed to reach the photochemical oxidant standard by 1977. Many of the stationary source controls are the same as or slightly modified versions of the regulations proposed on July 16, 1973. The transportation control measures have been modified considerably. The measures reflect testimony received at the August 6 and 7, 1973, public hearings in Fresno, and written comments received on the plan. Additionally, various State and/or locally implemented controls are noted as part of the total strategy to achieve the standard by 1977. EPA will carefully assess the reductions in VMT and improvements in air quality obtained from the various strategies and control regulations, and recommend additional strategies as needed between now and the 1977 legal attainment date.

The proposal to require a bus/carpool computer matching and promotion system by March 1974 has been modified to require that such a system be initially established at the Internal Revenue Center in Fresno. Upon evaluation, the system will be expanded throughout the four metropolitan areas of the Region. Finally, a "Mass Transit and Transit Priority Planning" regulation for the San Joaquin Valley Region has been added to the control plan.

A study sponsored by the California Department of Transportation is presently being conducted to determine the potential for public transit usage in the Fresno Area. Of particular interest to EPA will be the potential to establish preferential bus/carpool treatment on a north-south corridor between the Fresno CBD and northern residential suburbs. A six-lane freeway presently under construction in this corridor will be closely examined. It appears that similar studies will be necessary in other metropolitan areas of the Region in order to provide a rational basis for expanding mass transit service in certain areas of the San Joaquin Valley Region. As a result, EPA has promulgated final regulations calling for additional studies in the Stockton, Bakersfield, and

Modesto areas. From these future investigations and the Fresno study (in progress) transit strategy recommendations, including transit priority strategies, are to be submitted. These are to include implementation milestone timetables and obstacles, so that the Administrator can review all available information and determine the need for and the progress of implementation.

Surcharges on public and private parking have not been imposed in the urbanized portions of the San Joaquin Valley Region as they have in San Francisco, San Diego, and Los Angeles. However, the use of such a surcharge to raise revenue for mass transit is being considered by the Administrator, and written comment on this point is particularly invited.

Locally implemented strategies. The public hearing testimony, written comments, and the San Joaquin Valley Task Force indicated a wide variety of measures that could best be carried out on the local or state level. The EPA plan notes these measures as being applicable toward attainment of the oxidant standard and will encourage their implementation, although the reductions are not credited as part of the EPA plan. Furthermore, EPA will evaluate the progress and success in the implementation of these and similar measures and, if found necessary, promulgate additional measures to supplement them. Many of these measures will likely be contained in the anticipated revisions to the State Implementation Plan as a result of the Cal/Trans task force findings. In meetings between EPA and the transportation task force officials, it was noted that the cities of Fresno and Stockton were in the process of upgrading and expanding their mass transit bus systems. The City of Bakersfield has recently taken over operation of a mass transit bus system, and has experienced encouraging initial success in its effort to increase ridership. The California Department of Transportation vehicle miles traveled reduction plan to be submitted to EPA is expected to document the progress made by the present mass transit programs in the Valley, and allow EPA to monitor and evaluate the need for and progress of future public mass

transit program implementation, including the present and the estimated future financial commitment to mass transit.

Local agencies and private citizens gave written and verbal testimony on the desirability of improved bicycle networks. Due to the level terrain, many trips in the San Joaquin Valley could be taken by bicycle. It is anticipated that improvements of this type will be made in the next several years.

San Diego Intrastate Air Quality Control Region Control Strategy

The San Diego Intrastate Region, also known as the San Diego Air Basin, is located in the southwest corner of the State and consists of nearly all of San Diego County. It is bounded on the east by the summit of the Peninsular Range, on the north by Orange County, and on the south and west by Mexico and the Pacific Ocean, respectively. The airshed has a land area of approximately 3,040 square miles, and, as of 1973, a population of some 1.5 million people. It is estimated that the motor vehicle population in 1972 was approximately 715,000. The Region's population is concentrated primarily in the City of San Diego and in the incorporated areas along the coast. The mountainous terrain and frequent inversions hold in pollutants, and the Southern California climate provides ample sunshine to aid in the formulation of photochemical oxidants. The automobile is presently the dominant mode of transportation, and accounts for the majority of the hydrocarbon and carbon monoxide emissions. Air pollution control in the Region is the local responsibility of the San Diego County Air Pollution Control District. Since the airshed is contained within one county, no additional regional coordinating council is required for stationary source controls. As in the rest of the State, mobile source emission controls are the responsibility of the California Air Resources Board.

An important factor in the design of any air pollution control strategy for the San Diego Region is the proximity

of the Tijuana, Mexico, metropolitan area. Tijuana is now the fifth largest city in Mexico with a population of over 500,000, and is located adjacent to the United States-Mexico Border, 12 miles south of downtown San Diego. Although prevailing meterological conditions do not normally move Tijuana-caused air pollutants over the metropolitan San Diego area, there is substantial movement of motor vehicles from Tijuana to locations in the San Diego area on a daily basis. Furthermore, enforcement of several of the EPA-promulgated regulations will be more difficult due to the border problem. EPA will work closely with environmental authorities in the Republic of Mexico to help alleviate air pollution problems in this and other international urban areas.

The national ambient air quality standards for photochemical oxidants and carbon monoxide have been exceeded in the Region. In 1970, the maximum 1-hour oxidant reading recorded in the Region was 0.40 ppm at the Oceanside station. The use of this oxidant reading for air planning purposes was rejected on the basis that the reading was the result of an unusual traffic stoppage caused by highway construction, combined with unusually heavy volume that day. The next highest maximum 1-hour oxidant reading that occurred in the Region was 0.32 ppm at the Escondido Station, in 1972, and this reading was used for oxidant air planning purposes. (The maximum oxidant reading was statistically evaluated by the method described earlier in the Metropolitan Los Angeles preamble, and was found to be substantially correct.) A high 8-hour carbon monoxide reading of 18 ppm recorded in 1972 is being used for carbon monoxide air planning purposes. As in other areas of California, the predominant air pollution problem is photochemical oxidants. A review of air quality data for 1970-1972 shows that both oxidant and carbon monoxide standards were frequently exceeded. Both the frequency of violations and the maximum levels of oxidant experienced indicate the need for extensive mobile and stationary source control if the national ambient air quality standards are to be achieved. The oxidant problem is the main obstacle to attainment of the standards.

Emissions must be lowered to the following levels to meet the photochemical oxidant and the 8-hour carbon monoxide standards: the reactive hydrocarbon emissions must be lowered to 25 percent of 1972 emission levels in order to meet the oxidant standard, and the carbon monoxide emissions must be lowered to 50 percent of 1972 emission levels in order to meet the carbon monoxide standard, using the proportional roll-back model.

The majority of the carbon monoxide and reactive hydrocarbon emissions in the Region are attributable to motor vehicles. In addition to stringent controls for stationary sources and requirements for mechanized emissions controls on motor vehicles, VMT reductions will also have to be effected in order to meet the oxidant standard in 1977. It should also be pointed out that it is estimated by EPA that one of the proposed technical strategies, catalyst retrofit, cannot be implemented before 1977.

Table 6 shows the impact the proposed measures will have on total emissions in the San Diego Region.

TABLE 6.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SAN DIEGO REGION IN 1977

Source and control measures	Emissions and reductions of reactive hydrocarbons, tons/day	Percent reductions per measure
Stationary source emissions in 1977 without proposed control strategy	20.6	
Expected reductions:		
1. Surface coating restrictions, dry cleaning, and degreasing controls	—15.8	28.2
Stationary emissions remaining	4.8	

TABLE 6.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SAN DIEGO REGION IN 1977—Continued

Source and control measures	Emissions and reductions of reactive hydrocarbons, tons/day	Percent reductions per measure
Mobile source emissions in 1977 without proposed control strategy	86.4	
Expected reductions:		
1. Reductions from only EPA promulgated VMT control strategies assuming an 11 percent VMT reduction [1]	—6.4	11.4
2. Catalyst retrofit, and mandatory inspection and maintenance	—12.9	23.0
3. Motorcycle limitations	—1.9	3.4
4. VMT reductions necessary from additional control strategies to be implemented in 1977	—19.0	34.0
Mobile emissions remaining	46.2	
Total emissions remaining	51.0	
Allowable emissions for attainment of standard for photochemical oxidants [2]	51.0	

[1] Using optimistic assumptions and estimations of both EPA and local VMT reduction measures, a total reduction of 29 percent, or 16.9 tons/day could occur.

[2] Based on linear rollback model.

Based upon the available data, EPA has made rough estimates of the VMT reductions that can reasonably be expected from the EPA and local measures. The EPA strategy for the San Diego Intrastate AQCR should yield reductions of between 11 and 19 percent. The local measures not promulgated by EPA should provide an additional 7 to 10 percent reduction in VMT. It should be noted that EPA has promulgated many of the local measures and therefore the 11 to 19 percent VMT reduction reflects these task force measures. An additional VMT reduction of 7 to 10 percent would result from additional task-force recommended measures. Based on present data, the remaining VMT reduction can only be achieved through more stringent means such as gas rationing in 1977.

It is assumed by EPA, and is implicit in the control strategy calculations, that all Federal facilities will comply with State, local, and EPA air pollution emissions rules and regulations. Due to the extensive military activities in the San Diego Region and the significant harm to air quality that emissions from sources connected with these activities could produce, it is particularly important that military vehicles, operations, and facilities follow presidential Executive Order 11507 by conforming to State, local, and EPA rules and regulations. It is estimated that 40 percent of all aircraft operations in the San Diego area are by the military.

A recent decision to consolidate various Naval activities in the San Diego area is estimated by local officials to have the net effect of adding 50,000 persons to the San Diego area in the next 2 years. Several of the EPA regulations will initially be specific to military facilities, and EPA will work closely with the Department of Defense to develop additional strategies to lessen the impact of emissions from military activities.

Discussion of final EPA control strategy for San Diego AQCR. The control strategy for the San Diego Region consists of various stationary and mobile source controls designed to reach the photochemical oxidant standard by 1977. Many of the stationary source controls are the

same, or slightly modified. Versions [sic] of the regulations proposed in the July 16, 1973, FEDERAL REGISTER. The transportation control measures have been modified considerably. The measures reflect testimony received at the August 7, 1973, public hearing in San Diego and written comments received on the plan. Additionally, various State and/or locally implemented controls are noted as part of the total strategy to achieve the standard by 1977.

The proposal to require a bus/carpool computer matching and promotion system by March 1974 has been modified to require that such a system be initially established at the U.S. Navy Electronics Laboratory and the U.S. Navy Underwater Systems Center in San Diego. Upon evaluation, the system will be expanded throughout the region. The Cal/Trans task force estimates a 4-percent reduction in VMT by 1977 if half the employees use the three-phase volunteer carpool system. Total cost of implementing this measure is $175,000. Finally, approximately 10 miles of freeway will be given preferential bus/carpool treatment through ramp metering with bus/carpool bypass lanes, and a major downtown San Diego street, Broadway, will be converted to exclusive bus usage as the first phase of a program to establish preferential treatment for mass transit.

Locally implemented strategies. The public hearing testimony, written comments, and the San Diego Task Force indicated a wide variety of measures that could best be carried out on the local or State level. The EPA plan notes these measures as being applicable toward attainment of the oxidant standard and will encourage their implementation, although the reductions are not credited as part of the EPA plan. Furthermore, EPA will evaluate the progress and success in the implementation of these and similar measures and if necessary, promulgate additional measures to supplement them. Many of these measures will likely be contained in the anticipated revisions to the State Implementation Plan as a result of the Cal/Trans task force findings. The task force estimates that the measures discussed below

will accomplish at least a 12.5 percent reduction in VMT by 1977.

Major improvements to the mass transit system in San Diego have occurred during the past year and are expected to be expanded as additional funds become available for these purposes. San Diego Transit initiated a 25¢, all-destinations, fare in August 1972 and bus ridership has doubled since that time. Three express bus routes to outlying areas of the metropolitan area were established in the past year and at least six more will be in operation by the end of 1977. This part of the system will require at least 125 new buses with an additional 175 feeder and local, off-peak buses to serve the express routes. Also, it is planned that 30 buses will be added to the North County system. Fringe parking lots will be established along these routes as well as at major regional shopping centers. Approximately 20 fringe parking lots are planned to serve the expanded mass transit system with a pilot project planned at Miramar for 1975. There are plans to place bicycle protection facilities at these fringe parking lots to allow nearby residents to bicycle to the bus stops. Ridership incentive programs are being planned through an extensive public information program. Dial-A-Bus and subscription bus service will also be carefully examined. The Cal/Trans task force estimates a 5-percent reduction in VMT by 1977 through implementation of these measures.

The city of San Diego has a $125,000 regional bike way plan under consideration, consisting of 30 local bikepath proposals. Additionally, Cal/Trans is examining at least two bike routes to parallel portions of proposed freeway improvements.

Various traffic flow improvement programs are either underway or proposed for the next 4 years in the San Diego Region. These include a major synchronized traffic signal system for major arterials, easing of traffic bottlenecks, and additional ramp metering. City officials are examining the possibility of fringe parking facilities on the perimeter of the central business district with a sys-

tem of people-movers and automobile bans in the same area.

A final measure that will likely be the subject of further consideration and experimentation in the next few years will be the variation of the work week to four 10-hour days and other combinations to determine the effects of such variations on air quality and VMT. Governmental agencies will be early candidates for this program.

San Francisco Bay Area Intrastate Air Quality Control Region Control Strategy

The San Francisco Bay Area Intrastate Region is comprised of nine counties, namely: Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Napa, Solano, and Sonoma. The region covers approximately 5,600 square miles and has within its bounds approximately 4.6 million people and 2.7 million motor vehicles. Air pollution control in the region falls under the jurisdiction of the Bay Area Air Pollution Control District created by the California Legislature in 1955. During 1971, the Region experienced numerous violations of both Federal and State air quality standards. Based upon the linear rollback model and a high year or base year maximum 1-hour oxidant reading of .36 ppm which occurred in 1971 at San Leandro, a 78-percent reduction in base year reactive hydrocarbon emissions is required to achieve the ambient air quality standards for photochemical oxidant. (The maximum oxidant reading used was statistically evaluated by the method described earlier and was found to be substantially correct.)

Although mobile sources presently account for the majority of the emissions, their control alone will not be sufficient to allow for attainment of national ambient air quality standards. Table 7 shows the impact the proposed measures will have on the total emissions in the Region.

Table 7.—Summary of Impact of Control Strategies in San Francisco Bay Region in 1977

Source of pollutant and control measures	Emissions and reductions tons/day of reactive hydrocarbons	Percent reduction per measure
Stationary source emissions in 1977 without control strategy	225	
Expected reductions:		
1. Gasoline marketing vapor recovery	—138	45.8
2. Surface coating, dry cleaning, and degreasing controls	—37	12.3
Stationary source emissions remaining	50	
Mobile source emissions in 1977 without proposed control strategy	201	
Expected reductions:		
1. Reductions from only EPA-promulgated VMT control strategies assuming an 11 percent VMT reduction.[1]	—14	4.7
2. Light-duty motor vehicle inspection and maintenance and catalytic converter retrofit	—33	11.0
3. Motorcycle emissions regulation	—6	2.0

[1] Using optimistic assumption and estimations of both EPA and local VMT reduction measures, a total reduction of 32 percent VMT, or 41 tons/day could occur.

TABLE 7.—SUMMARY OF IMPACT OF CONTROL STRATEGIES IN SAN FRANCISCO BAY REGION IN 1977—Continued

Source of pollutant and control measures	Emissions and reductions tons/day of reactive hydrocarbons	Percent reduction per measure
4. VMT reductions necessary from additional control strategies to be implemented in 1977	—73	24.2
Mobile emissions remaining	75	
Total emissions remaining	125	
Allowable emissions to attain standards.[1]	125	

[1] Based on linear rollback model.

A VMT reduction of 97 percent is necessary if the national standard for photochemical oxidants is to be attained by 1977.

Based upon available data, EPA has made rough estimates of the VMT reductions that can reasonably be expected from the EPA and the local measures. The EPA strategy for the San Francisco Bay Area Intrastate AQCR should yield reductions of between 11 and 28 percent; the local measures should provide an additional 4 percent improvement in air quality. Based on present data, the remainder of the VMT reduction needed can only be achieved through more stringent measures, such as gas rationing, imposed in 1977.

It is hoped that in the process of developing a regional transportation plan, the Metropolitan Transportation Commission will be able to determine the effect of its plan upon air quality generally, and specifically upon the miles traveled by automobiles. Many of the measures in the

EPA-promulgated control plan consist of MTC adopted strategies.

Discussion of final EPA control strategy for San Francisco Bay Area AQCR. The control strategy for the San Francisco Bay Area Region consists of various stationary and mobile source controls designed to reach the photochemical oxidant standard by 1977. Many of the stationary source controls are the same, or slightly modified, versions of the regulations proposed in the July 16, 1973, FEDERAL REGISTER. The transportation control measures have been modified considerably. The measures reflect testimony received at the August 8, 1973 public hearing in San Francisco and written comments received on the plan. Additionally, various State and/or locally implemented controls are noted as part of the total strategy to achieve standard by 1977. For example, full implementation of the Bay Area Rapid Transit (BART) system during the next year should reduce VMT by 2 percent in the Region. EPA will carefully assess the reductions in VMT and improvements in air quality obtained from the various strategies and control regulations, and recommended additional strategies as needed between now and the 1977 legal attainment date.

The proposal to require a bus/carpool computer matching and promotion system by March of 1974 has been modified to require an in-depth evaluation of the present carpool program being implemented by governmental agencies in the San Francisco CBD and to determine the most feasible plan for full scale implementation. Special emphasis is given to pilot bus/carpool programs at Alameda Naval Air Station, Moffett Field Naval Air Station, U.S. Army Presidio, and Treasure Island Naval Station.

Locally implemented strategies. The public hearing testimony, written comments, and the meetings with the State and local transportation officials (San Francisco "Task Force") indicated a wide variety of measures that could be best carried out on the local or State level. In the San Francisco Bay Area, such measures as those being investigated and implemented through the Metro-

politan Transportation Commission (MTC) are of particular interest to the Environmental Protection Agency, particularly with regard to their effect on air quality. At the public hearings on the EPA transportation control plan proposal, testimony given by an official representing the MTC shows that 10- to 15-percent VMT reduction will occur as a result of the MTC plan, and that an additional 5-percent VMT reduction could occur with an enlarged MTC program. In regulations promulgated by this rulemaking, the EPA is requiring the State to submit an analysis of the status of each element of the MTC Regional Transportation Plan and to substantiate its effect on air quality. It is the Administrator's understanding that such an analysis is currently underway by the California Department of Transportation (Cal/Trans) and will be submitted to EPA.

Locally implemented strategies that the MTC and State are investigating include in part: Bridge toll fare increases, exclusive bus and carpool lanes, ramp metering, increased bicycle facilities, improved local transit, anticipated Bay Area Rapid Transit expansion, increased ferry service to the North Bay, fringe parking facilities, and reduced transit fares.

Possible further action. The Clean Air Act requires that all "reasonably available" measures to reduce emissions be applied between now and 1977. The plan promulgated today attempts to fulfill this requirement.

The Administrator is conscious, however, that his knowledge of this field is necessarily imperfect and incomplete. Measures may not work as well as anticipated, or they may work better. Further study may show that more controls are needed or feasible or that different methods of attaining the same end would be preferable. In cases where State or local actions are considered in calculating emission reductions, they may not be implemented as presently anticipated.

The plan approved today constitutes final rulemaking. Its measures are legally enforceable, and EPA will enforce them unless and until alternatives are suggested and found to be preferable. However, the lack of knowledge in this field makes it highly conceivable that such

alternatives will be suggested. EPA welcomes such suggestions, and will in addition monitor the effect of this plan continuously to see whether revisions, or the addition of more stringent measures, is in order.

(Secs. 110(c), 301(a), Pub. L. 89-272, 79 Stat. 992 (42 U.S.C. 1857c-5(c)).)

Dated: October 30, 1973.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. In § 52.222, paragraphs (b) and (c) are added to read:

§ 52.222 Extensions.

* * * * *

(b) The Administrator hereby extends the attainment dates for the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) as follows: San Francisco Bay Intrastate, two years (to May 31, 1977); Metropolitan Los Angeles Intrastate, two years (to May 31, 1977); San Diego Intrastate, two years (to May 31, 1977); Sacramento Valley Intrastate, two years (to May 31, 1977); San Joaquin Valley Intrastate, two years (to May 31, 1977); Southeast Desert Intrastate, two years (to May 31, 1977).

(c) The Administrator hereby extends the attainment dates for the national standards for nitrogen dioxide as follows: Metropolitan Los Angeles Intrastate, two years (to May 31, 1977).

§ 52.237 [Reserved]

2. Section 52.237 is revoked and reserved.

§ 52.238 [Amended]

3. In § 52.238, the attainment date table is amended by revoking footnotes f and g and revising the first column (Air Quality Control Region) and the last three columns [Nitrogen Dioxides, Carbon Monoxide, and Photochemical oxidants (Hydrocarbons)] to read as follows:

Air Quality Control Region	Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (Hydrocarbons)
North Coast Intrastate	(e)	(e)	(e)
San Francisco Bay Intrastate	(e)	May 31, 1977	May 31, 1977
North Central Coast Intrastate	(e)	(e)	(a)
South Central Coast Intrastate	(e)	(e)	(a)
Metropolitan Los Angeles Intrastate	May 31, 1977	May 31, 1977	May 31, 1977
San Diego Intrastate	(e)	May 31, 1977	May 31, 1977
Northeast Plateau Intrastate	(e)	(e)	(e)
Sacramento Valley Intrastate	(e)	May 31, 1977	May 31, 1977
San Joaquin Valley Intrastate	(e)	May 31, 1977	May 31, 1977
Great Basin Valley Intrastate	(e)	(e)	(e)
Southeast Desert Intrastate	(e)	May 31, 1977	May 31, 1977

§ 52.239 [Reserved]

4. Section 52.239 is revoked and reserved.

5. Sections 52.241 through 52.266 are added to read as follows:

§ 52.241 Gasoline limitations.

(a) Definitions:

(1) "Distributor" means any person or entity that transports, stores, or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(2) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This regulation is applicable in the Metropolitan Los Angeles, San Francisco Bay Area, Sacramento Valley, San Joaquin Valley, and San Diego Intrastate Air Quality Control Regions (the "Regions") to all distributors of gasoline to any retail outlet in the Regions, and

to the owners and operators of all retail outlets in the Regions.

(c) If the Administrator determines, on the basis of air quality monitoring in the Regions, that the national ambient air quality standards for carbon monoxide and photochemical oxidants will not be attained in a Region by May 31, 1977, the Administrator shall implement a program, to be effective no later than May 31, 1977, limiting the total gallonage of gasoline delivered to retail outlets in that Region to that amount which, when combusted, will not result in the ambient air quality standards being exceeded.

(d) All distibutors to which this section applies shall provide the Administrator with a detailed annual accounting of the amount of gasoline delivered to each retail outlet in the Regions for calendar year 1976 and for each calendar year during which the gasoline limitation program is in effect. The owner or operator of each retail outlet to which this section applies shall provide the Administrator with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year, and each year during which the gasoline limitation program is in effect. All accountings required by this section shall be provided no later than 90 days after the end of the applicable year. The Administrator may require any other report that he may deem necessary for the implementation of this section.

§ 52.242 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control-related maintenance and requiring that maintenance be performed.

(2) "Light-duty vehicle" means any gasoline-powered motor vehicle rated at 6,000 pounds GVW or less.

(3) All other terms used in this section that are defined in Appendix N to Part 51 of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (hereinafter referred to as the Regions).

(c) The State of California shall establish an inspection and maintenance program applicable to all light-duty vehicles registered in the Regions that operate on streets or highways over which it has ownership or control. No later than June 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The State may exempt any class or category of vehicles which it finds are rarely used on public streets and highways (such as classic or antique vehicles). The regulations shall include:

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than one year apart by means of a loaded test.

(2) Provisions for inspection failure criteria consistent with the emission reductions claimed in the plan for the strategy. These emission reductions are 15 percent for hydrocarbons and 12 percent for carbon monoxide. These criteria are estimated to include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against non-complying individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that, following inspection or maintenance, vehicles are not intentionally readjusted or modified in such a way as would cause

them no longer to comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle on October 1, 1975, and completing it by September 30, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After September 30, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After September 30, 1976, no owner of a light-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new vehicle.

(f) The State of California shall submit no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations that it will propose for adoption. The compliance schedule shall also include:

(1) The date by which the State will recommend any needed legislation to the State legislature.

(2) The date by which necessary equipment will be ordered.

(3) A signed statement from the Governor and State Treasurer identifying the sources and amount of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

§ 52.243 Motorcycle limitation.

(a) Definitions:

(1) "Motorcycle" means any self-propelled, two- or three-wheeled motor vehicle capable of carrying one or more persons.

(b) This section is applicable in the San Diego, Los Angeles, San Francisco Bay Area, San Joaquin Valley, and Sacramento Valley Air Quality Control Regions (the "Region").

(c) As of January 1, 1976, the State of California shall prohibit the operation of motorcycles in each Region between the hours of 6 a.m. and 8 p.m. during the months of May, June, July, August, and September.

(d) The restrictions set forth in paragraph (c) of this section shall be of no force and effect during the period from January 1, 1976, to December 31, 1978, if the Administrator establishes legally valid and binding emission standards applicable to all new motorcycles meeting the light-duty vehicle definition of the Clean Air Act, sold in 1976 and later model years, and such standards require emission levels representing at least a 50 percent reduction in present emission levels of hydrocarbons emitted by 2-stroke motorcycles and a significant reduction in emissions of carbon monoxide from present levels emitted by both 2- and 4-stroke motorcycles.

(e) The restrictions set forth in paragraph (c) of this section shall be of no force and effect on and after January 1, 1979, if the Administrator establishes legally valid and binding emission standards for new motorcycles sold in the 1979 and later model years, and such standards [require] motorcycles manufactured during the 1979 and later model years to achieve at least the same degree of emission control of hydrocarbons and carbon monoxide as is required for 1976 and later model year light-duty vehicles.

(f) No later than July 1, 1975, and July 1, 1978, respectively (unless the applicable exemptions under paragraphs (d) or (e) of this section have becom. available), the State shall submit a detailed compliance schedule showing the steps it will take to implement and enforce these requirements, including:

(1) The text of needed statutory proposals and needed regulations which it will propose for adoption.

(2) A date by which the State will adopt procedures (or submit evidence that they are in existence) necessary to restrict the operation of motorcycles as required above. Such date shall be no later than December 1, 1975, and December 1, 1978, respectively.

§ 52.244 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device installed in the exhaust system of a vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emissions of hydrocarbons and carbon monoxide from that vehicle.

(2) "Light-duty vehicle" means any gasoline-powered motor vehicle rated at 6,000 pounds GVW or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the San Diego, San Francisco Bay Area, San Joaquin Valley, Sacramento Valley, and Metropolitan Los Angeles Intrastate Air Quality Control Regions.

(c) The State of California shall establish a retrofit program to ensure that on or before May 31, 1977, all gasoline-powered, light-duty motor vehicles of model years 1966 through 1974, which are subject under currently existing legal requirements to registration in the area defined in paragraph (b) of this section, and which are capable of operating on unleaded gasoline having a research octane number (RON) of 91 or lower, are equipped with an appropriate oxidizing catalyst retrofit device. No later than September 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving such devices for use in motor vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (c) (3) of this section are enforced.

(3) A provision that, starting no later than December 1, 1975, the State of California shall commence retrofitting oxidizing catalysts to those light-duty motor vehicles able to operate properly and safely on unleaded 91 RON gasoline. The installation shall be completed by May 31, 1977.

(4) A method and proposed procedures for ensuring that those installing the retrofits have the training and ability to perform the needed tasks satisfactorily and that they have an adequate supply of retrofit components.

(d) After May 31, 1977, the State shall not register or allow to operate on public streets or highways any light-duty, gasoline-powered vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(e) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section.

(f) The State of California shall submit, no later than April 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to paragraph (c) of this section, and the text of needed statutory proposals and needed regulations that it will propose for adoption. The compliance schedule shall include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

§ 52.245 Control of oxides of nitrogen, hydrocarbon, and carbon monoxide emissions from in-use vehicles.

(a) The State of California retrofit program, authorized under section 39176 of the State of California Health and Safety Code and established by the California Air Resources Board for the purpose of controlling oxides of nitrogen, hydrocarbon, and carbon monoxide emissions from model year 1955 through 1965 light-duty motor vehicles, shall be extended to the San Joaquin Valley and Sacramento Valley Intrastate Air Quality Control Regions (the "Regions").

(b) Beginning March 31, 1974, the State of California shall commence the operation of this program in the Regions.

§ 52.246 Control of dry cleaning solvent vapor losses.

(a) For the purpose of this section, "dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions.

(c) Any dry cleaning establishment that uses solvents containing 4 percent or more by volume of any reactive organic material listed under paragraphs (k) (1), (2), and (3) of § 52.254 except perchloroethylene or any saturated halogenated hydrocarbon shall reduce the emissions of the discharged organics by 90 percent by use of activated carbon adsorption or other appropriate means; not later than January 1, 1975.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic compounds being incinerated must be oxidized to carbon dioxide.

§ 52.247 Definitions for parking management regulations.

(a) For purposes of §§ 52.248, 52.249, 52.250, and 52.251:

(1) "Parking facility" (also called "facility") means any facility, building, structure, lot, or portion thereof used primarily for temporary storage of motor vehicles.

(2) "Parking space" means any area whatsoever customarily used for the temporary storage of a motor vehicle that is not being held for the sole purpose of original sale, resale, or repair.

(3) "Employer" means any person or entity that employs 50 or more persons. "Employee parking space" means any parking space reserved or provided by any employer for the primary use of his employees.

(4) "Residential parking space" means any parking space used primarily for the parking of vehicles of persons residing within less than half a mile of the space.

(5) "Commercial parking space" means any parking space in which the parking of a single motor vehicle is permitted for a fee. It includes on-street parking governed by parking meters, and excludes employee and residential parking spaces.

(6) "Free parking space" means any parking space in which the parking of a single motor vehicle without a fee is permitted or encouraged by the person having control of such space, whether for the purpose of encouraging patronage of commercial establishment(s) or otherwise. It includes free on-street parking and free parking on vacant lots, and excludes employee and residential parking spaces. All parking spaces are either commercial, employee, residential, or free parking spaces.

§ 52.248 Surcharge on commercial parking spaces.

(a) This section is applicable in the Los Angeles, San Diego, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions").

(b) A surcharge of the amount designated in paragraph (c) of this section shall be applied to all contracts or other agreements whereby a vehicle is parked for a fee in any commercial parking space located in the areas described in paragraph (a) of this section. Such surcharge shall be collected by the county or municipality having regulatory jurisdiction over the particular commercial parking space involved or by its designated agent. The surcharge fees minus collection expenses, but in any event no less than 50 percent of the gross proceeds, shall be utilized for EPA approved or designated mass transit

improvements within the Region in which the surcharge is collected. The State of California, or its designated agent, if it wishes, may collect such surcharge instead of the relevant local governmental entity. The surcharge shall be calculated on an hourly basis and applied to all parking between the hours of 7:00 a.m. and 7:00 p.m. on all days other than Saturdays, Sundays, and legal holidays. However, the maximum daily surcharge shall not exceed ten times the hourly surcharge rate, and if a vehicle is parked for more than one day, only the surcharge for the first day shall be collected. Exemptions from this surcharge may be given to handicapped persons and disabled veterans.

(c) The surcharge shall be implemented on the following schedule:

Effective date	Hourly rate	Area of applicability
July 1, 1974	$0.10	All cities with population greater than 100,000 in the Regions.
July 1, 1975	.20	All cities with population greater than 50,000 in the Regions.
July 1, 1976	.25	Regions as a whole.

(d) Each person or entity owning or operating any commercial parking space subject to this section, and each local government entity on which obligations are imposed by this section shall, at least 3 months before the effective date of any surcharge provided by this section, submit to the Administrator a detailed compliance schedule showing the steps it will take to collect the said surcharge. The compliance schedule shall specify steps to be taken to keep a permanent record of the number of vehicle hours of parking for which the facility is used each day that can be compared with the revenues collected, and, in the case of governmental entities respon-

sible for collecting such fees, shall also detail a system of spot checks or similar enforcement measures designed to assure that owners and operators of commercial parksection, the exact manner in which the revenues so collected will be used to promote mass transit, and a documentation of the surcharge collection expenses incurred.

(e) Parking spaces or facilities that are used exclusively to service mass transit (for example, park-and-ride facilities) shall be exempt from the provisions of this section, but a request for exemption must be made to the Administrator and approved by him.

§ 52.249 Surcharge on free parking spaces.

(a) This section is applicable in the Metropolitan Los Angeles, San Diego, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions").

(b) Any owner or operator of more than five free parking spaces shall be subject to a regulatory fee in the amount set forth in paragraph (c) of this section. Such surcharge shall be collected by the county or municipality having regulatory jurisdiction over the particular free parking space involved, or its designated agent, and the surcharge fees minus collection expenses, but in any event no less than 50 percent of the gross proceeds shall be utilized for EPA approved or designated mass transit improvements within the Region in which the surcharge was collected. The State of California, or its designated agent, if it wishes, may collect the surcharge instead of the relevant local government. The surcharge shall be assessed annually each July 1 on the number of free parking spaces in existence at that date. Spaces temporarily removed for the purpose of avoiding the surcharge shall also be assessed.

However, to the extent that any person subject to a surcharge under this section elects to make payments to promote mass transit or carpooling in a manner satisfactory both to the Administrator and the collecting agency, the amount of the surcharge shall be abated. For example, a shopping center might institute a Dial-a-Ride service.

(c) The surcharge shall be implemented on the following schedule:

Effective date	Yearly amount per parking space	Area of applicability
July 1, 1974	$180	All cities with population greater than 100,000 in the Regions.
July 1, 1975	360	All cities with population greater than 50,000 in the Regions.
July 1, 1976	450	Regions as a whole.

The amount of the fee was determined by calculating what the annual proceeds of the surcharge imposed by § 52.248 of this subpart on a commercial parking space would be assuming a 250-day year and 60 percent average occupancy during the days on which the fee was collected.

(d) Each person or entity owning or operating any free parking space subject to this section shall, at least 5 months before the effective date of any surcharge provided by this section, submit to the Administrator an exact accounting of the number and location of such spaces under its ownership or control. Each local government entity on which obligations are imposed by this section shall, at least 3 months before the effective date of any surcharge provided by this section, submit to the Administrator a detailed compliance schedule showing the steps it will take to assess the accuracy of and correct any omissions in the accounts submitted by owners or operators subject to this section, the steps to collect the surcharge provided by this section, the exact manner in which the revenues so collected will be used to promote

mass transit, and a documentation of the surcharge collection expenses incurred.

(e) Parking spaces or facilities that are used exclusively for serving mass transit (for example, park-and-ride facilities) shall be exempt from the provisions of this section, but a request for such exemption must be made to the Administrator and approved by him.

§ 52.250 Employers provision for mass transit priority incentives.

(a) Definitions:

(1) "Carpool" means a vehicle containing two or more persons.

(2) "Commercial rate" means the average daily rate charged by the three operators of parking facilities containing 100 or more commercial parking spaces that are closest in location to any employee parking space affected by this section.

(b) This section is applicable in the Metropolitan Los Angeles, San Francisco Bay Area, and San Diego Intrastate Air Quality Control Regions: in the Stanislaus, Fresno, San Joaquin, and Kern County portions of the San Joaquin Valley Intrastate Air Quality Control Region; and in the Sacramento, Yolo, El Dorado, and Placer County portions of the Sacramento Valley Air Quality Control Region (the "Regions").

(c) Each employer in the areas listed below maintaining more than the number of employee parking spaces specified, shall, commencing on the date listed, charge no less than the rate shown in the following table for the use of any such employee parking space by employees driving to work and not traveling in carpools:

EMPLOYER PARKING RATES

Employers (classified by number of employee parking spaces maintained)	Effective date	Total rate equals commercial rate (CR) plus—	Area of applicability
700	July 1, 1974	$1.00	All areas.
70	July 1, 1974	1.00	All cities over 100,000 in the Los Angeles, San Diego, and San Francisco Regions.
700	July 1, 1975	2.00	All areas.
70	July 1, 1975	2.00	All cities over 50,000 in the Los Angeles, San Diego, and San Francisco Regions.
70	July 1, 1975	1.00	All areas other than cities over 50,000.
700	July 1, 1976	2.50	All areas.
70	July 1, 1976	2.50	All areas in the Los Angeles, San Diego, and San Francisco Regions.
70	July 1, 1976	2.00	All areas in the Sacramento and San Joaquin Regions.
70	Mar. 31, 1977	2.50	All areas.

No employer may charge employees traveling to work in two-person carpools more than half the parking rate specified for non-carpool vehicles by this table. Carpools of three or more shall be allowed to park free of charge, and shall be allotted the spaces closest to the employment facility.

(d) Each employer subject to an obligation under paragraph (c) of this section, shall on the first date such an obligation becomes effective, also

(1) Institute a program of reimbursing employees for their expenses in utilizing mass transit facilities. However, such reimbursements need not exceed $200 per year per employee. Reimbursements shall be made in a form usable only as payment for the cost of such mass transit to be used by the employee only for commuting travel.

(2) Take all reasonable steps to encourage employees to commute to work by subscription or charter bus and similar privately owned mass transit facilities.

(3) Any funds collected under this section and remaining after overhead and payments to employees under paragraph (d) (1) and (2) of this section shall be disbursed to a State-designated, EPA-approved mass transit planning agency.

(e) Each employer subject to obligations under this section shall, at least 3 months prior to the effective date of any such obligation, submit to the Administrator a detailed compliance schedule setting forth the steps it will take to meet those requirements. The compliance schedule shall include a procedure for checking vehicles to determine whether or not they are carpools; for collecting the fees required to be collected hereunder; for disbursing any sums to individual employees in compensation for their use of mass transit; and for ensuring that such disbursements are used only for that purpose. It shall specify the steps that will be taken to determine the commercial parking rate for each affected employment facility and to encourage use of such private transit facilities as charter buses.

(f) As of the date that any obligations under this section become effective as to any employer, any zoning

or land-use requirement specifying that an employer shall provide a given number of employee parking spaces for any given number of employees shall, as applied to such employer, be of no force or effect, except as specifically approved in writing by the Administrator.

§ 52.251 Management of parking supply.

(a) Definitions: All terms used in this section but not specifically defined below shall have the meaning given them in Part 51 of this chapter and this Part 52.

(1) "Vehicle trip" means a single movement by a motor vehicle that originates or terminates at a parking facility.

(2) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land or a building structure or portion thereof for use as a facility.

(3) "Modification" means any change, including enlargement, in the design, construction, capacity, or method of operation of a parking facility that increases or may increase the motor vehicle capacity of or the motor vehicle activity associated with such parking facility.

(4) "Commerce" means to undertake a continuous program of on-site construction or modification.

(b) This regulation is applicable in the Metropolitan Los Angeles, San Diego, and San Francisco Bay Area Intrastate Air Quality Control Regions, in the Stanislaus, Fresno, San Joaquin, and Kern County portions of the San Joaquin Valley Intrastate Air Quality Control Region, and in the Sacramento, Yolo, El Dorado, and Placer County portions of the Sacramento Valley Intrastate Air Quality Control Region.

(c) The requirements of this section are applicable to the following parking facilities in the areas specified in paragraph (b) of this section, the construction or modification of which commenced after August 15, 1973.

(1) Any new parking facility with parking capacity for 50 or more motor vehicles.

(2) Any parking facility that will be modified to increase parking capacity by 50 or more motor vehicles.

(3) Any parking facility constructed or modified in increments which individually are not subject to review

under this section, but which, when all such increments occurring since August 14, 1973, are added together, as a total would subject the facility to review under this section.

(d) No person shall commence construction or modification of any facility subject to this section without first obtaining written approval from the Administrator or any agency designated by him; provided that this paragraph shall not apply to any proposed parking facility for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(e) No approval to construct or modify a facility shall be granted unless the applicant shows to the satisfaction of the Administrator or agency approved by the Administrator that:

(1) The design or operation of the facility will not cause a violation of the control strategy which is part of the applicable implementation plan, and will be consistent with the plan's VMT reduction goals, and

(2) The emissions resulting from the design or operation of the facility will not prevent or interfere with the attainment or maintenance of any national ambient air quality standard at any time within 10 years from the date of application. A permit will be granted in every case where the applicant makes a showing satisfactory to the Administrator that the spaces to be built will be used exclusively for serving mass transit (for example, as part of a park-and-ride system.)

(f) All applications for approval under this section shall include the following information:

(1) Name and address of the applicant.

(2) Location and description of the parking facility.

(3) A proposed construction schedule.

(4) The normal hours of operation of the facility and the enterprises and activities that it serves.

(5) The total motor vehicle capacity before and after the construction or modification of the facility.

(g) All applications under this section for new parking facilities with parking capacity for 250 or more vehicles, or for any modification which, either individually or toegther with other modifications since August 15, 1973, will increase capacity by that amount, shall, in addition to that information required by paragraph (f) of this section, include the following information unless the applicant has received a waiver from the provisions of this paragraph from the Administrator or agency approved by him:

(1) The number of people using or engaging in any enterprises or activities that the facility will serve on a daily basis and a peak hour basis.

(2) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projection shall include data concerning the availability of mass transit from such areas.

(3) An estimate of the average and peak hour vehicle trip generation rates, before and after construction or modification of the facility.

(4) An estimate of the effect of the facility on traffic pattern and flow.

(5) An estimate of the effect of the facility on total VMT for the air quality control region.

(6) An analysis of the effect of the facility on site and regional air quality, including a showing that the facility will be compatible with the applicable implementation plan, and that the facility will not cause any national air quality standards to be exceeded within 10 years from date of application. The Administrator may prescribe a standardized screening technique to be utilized in analyzing the effect of the facility on ambient air quality.

(7) Additional information, plans, specifications, or documents required by the Administrator.

(h) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in ac-

cordance with applicable rules, regulations, permit conditions, and the design submitted in the application.

(i) Within 30 days after receipts of an application, the Administrator or agency approved by him shall notify the public, by prominent advertisement in the Region affected, of the receipt of the application and the proposed action on it (whether approval, conditional approval, or denial), and shall invite public comment.

(1) The application, all submitted information, and the terms of the proposed action shall be made available to the public in a readily accessible place within the affected air quality region.

(2) Public comments submitted within 30 days of the date such information is made available shall be considered in making the final decision on the application.

(3) The Administrator or agency approved by him shall take final action (approval, conditional approval, or denial) on an application within 30 days after close of the public comment period.

(j) As an alternative to satisfying the requirements of paragraphs (d) through (i) of this section, any local jurisdiction or authority may submit to the Administrator a comprehensive parking management plan covering, at a minimum, the next 5 years. The plan should be submitted no later than March 31, 1974. The Administrator shall approve such plan if he finds that:

(1) The agency submitting the plan has full and adequate legal authority to enforce compliance with its requirements.

(2) The area over which the agency exercises the authority described in paragraph (j) (1) of this section is a logical unit for air pollution control planning purposes.

(3) The plan sets forth a complete description of where additional construction of parking facilities will be allowed under the plan, and where parking spaces will be eliminated, either by the operation of the measures set forth in §§ 52.248 through 52.250, or by further measures already adopted or to be adopted. The plan must state in detail the reasons for expecting any anticipated reduction in parking spaces, and must provide

that no parking facility may legally be constructed in the area subject to the plan unless such construction is specifically authorized by the plan.

(4) The plan demonstrates that if its terms are carried out, air quality will improve at least as much as if all new parking facilities were subject to the requirements of paragraphs (d) through (i) of this section. If any increases in VMT would result under the proposed plan over and above the VMT figure that would result if the review system outlined in paragraphs (d) through (i) of this section were followed, the plan shall show by clear and convincing evidence any resulting impact on air quality to be insubstantial.

(5) The plan has been adopted after a public hearing held in conformity with the requirements of § 51.4 of this chapter.

(k) In any area covered by a parking management plan approved under paragraph (j) of this section, no action to expand the number of spaces at parking facilities may be taken that is not explicitly provided for in the plan without a permit issued in accordance with the requirements of paragraphs (d) through (i) of this section.

§ 52.252 Control of degreasing operations.

(a) "Degreasing" means any operation using an organic solvent as a surface cleaning agent prior to fabricating, surface coating, electroplating, or any other process.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Regions.

(c) Any organic emissions discharged from degreasing operations must either be reduced by at least 85 percent, or the degreasing solvent must be classified as nonphotochemically reactive as defined by paragraph (k) of § 52.254 not later than January 1, 1975. This regulation shall not be construed as lessening any emission control requirement specified under EPA approved regulations or § 52.254. Degreasing operations using perchloroethyl-

ene or saturated halogenated hydrocarbons shall be exempt from the requirements of this section.

§ 52.253 Metal surface coating thinner and reducer.

(a) All terms defined in § 52.254 are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions").

(c) The composition of the organics in all metal surface coating thinners and reducers that are manufactured after January 1, 1975, and are used in the Regions, shall conform to paragraph (k) of § 52.254 so as to be defined as a non-photochemically reactive solvent.

(d) After July 1975, the composition of the organics in all metal surface coating thinners and reducers that are used in the Regions, shall conform to paragraph (k) of § 52.254 so as to be defined as a non-photochemically reactive solvent.

(e) If there is an inadequate supply of necessary solvent ingredients needed in the manufacture of metal surface coating thinners and reducers for the purpose of meeting the composition requirements of this section in the time constraint required by this section; then evidence of such a supply inadequacy must be presented to the Administrator by the manufacturers of the metal surface coating thinners and reducers, so that the Administrator may grant to the industry an appropriate implementation time extension for meeting the requirements of this section, if and as warranted by the evidence presented.

§ 52.254 Organic solvent usage.

(a) This section is applicable in the San Joaquin Valley, Sacramento Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions").

(b) No person shall discharge into the atmosphere more than 15 pounds of organic materials in any 1 day or more than 3 pounds in any 1 hour from any article,

machine, equipment, or other contrivance in which any organic solvent or any material containing organic solvent comes into contact with flame or is baked, heat-cured, or heat-polymerized in the presence of oxygen, unless said discharge has been reduced by at least 85 percent. Those portions of any series of articles, machines, equipment, or other contrivances designed for processing continuous web, strip, or wire that emit organic materials in the course of using operations described in this section shall be collectively subject to compliance with this section.

(c) A person shall not discharge to the atmosphere more than 40 pounds of organic materials in any 1 day or more than 8 pounds in any 1 hour from any article, machine, equipment, or other contrivance used under conditions other than those described in paragraph (b) of this section for employing or applying any photochemically reactive solvent, as defined in paragraph (k) of this section, on material containing such photochemically reactive solvent, unless said discharge has been reduced by at least 85 percent. Emissions of organic materials into the atmosphere resulting from air- or heated-drying of products for the first 12 hours after their removal from any article, machine, or other contrivance described in this section shall be included in determining compliance with this paragraph. Emissions resulting from baking, heat-curing, or heat-polymerizing as described in paragraph (b) of this section, shall be excluded from determination or compliance with this section. Those portions of any series of articles, machines, equipment, or other contrivances designed for processing a continuous web, strip, or wire that emit organic materials in the course of using operations described in this section shall be collectively subject to compliance with this section.

(d) A person shall not, after August 31, 1976, discharge into the atmosphere more than 3,000 pounds of organic materials in any 1 day or more than 450 pounds in any 1 hour from any article, machine, equipment, or other contrivance in which any non-photochemically reactive organic solvent or any material containing such a

solvent or any material containing such a solvent is employed or applied, unless said discharge has been reduced by at least 85 percent. Emissions of organic materials into the atmosphere resulting from air- or heated-drying of products for the first 12 hours after their removal from any article, machine, equipment, or other contrivance described in this section shall be included in determining compliance with this section. Emissions resulting from baking, heat-curing, or heat-polymerizing as described in paragraph (b) of this section shall be excluded from determination of compliance with this section. Those portions of any series of articles, machines, equipment, or other contrivances designed for processing a continuous web, strip, or wire that emit organic materials in the course of using operations described in this action shall be collectively subject to compliance with this section.

(e) Emissions of organic materials to the atmosphere from the cleaning with photochemically reactive solvent, as defined in paragraph (k) of this section, of any article, machine, equipment, or other contrivance described in paragraphs (b), (c), or (d) of this section, shall be included with the other emissions of organic materials for determining compliance with this rule.

(f) Emissions of organic materials into the atmosphere required to be controlled by paragraphs (b), (c), or (d) of this section, shall be reduced by:

(1) Incineration, provided that 90 percent or more of the carbon in the organic material being incinerated is oxidized to carbon dioxide, or

(2) Adsorption, or

(3) Processing in a manner determined by the Administrator to be not less effective than the methods outlined in paragraph (f) (1) or (2) of this section.

(g) A person incinerating, adsorbing, or otherwise processing organic materials pursuant to this section shall provide, properly install and maintain in calibration, in good working order and in operation, devices as specified in the authority to construct or permit to operate, or as specified by the Administrator, for indicating temperatures, pressures, rates of flow, or other operating conditions necessary to determine the degree and effectiveness of air pollution control.

(h) Any person using organic solvents or any materials containing organic solvents shall supply the Administrator upon request and in the manner and form prescribed by him, written evidence of the chemical composition, physical properties, and amount consumed for each organic solvent used.

(i) The provisions of this section shall not apply to:

(1) The manufacture of organic solvents, or the transport or storage of organic solvents or materials containing organic solvents.

(2) The use of equipment for which other requirements are specified by rules or which are exempted from air pollution control requirements by applicable rules affecting the storage of petroleum products, effluent oil-water separators, and the transfer of gasoline.

(3) The spraying or other employment of insecticides, pesticides, or herbicides.

(4) The employment, application, evaporation, or drying of saturated halogenated hydrocarbons or perchloroethylene.

(5) The use of any material in any article, machine, equipment, or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The volatile content of such materials consists only of water and organic solids, and

(ii) The organic solvents comprise not more than 20 percent by volume of said volatile content, and

(iii) The volatile content is not photochemically reactive as defined in paragraph (k) of this section, and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame.

This last stipulation applies only for those articles, machines, equipment, or contrivances that are constructed or modified after the effective date of this section.

(6) The use of any material in any article, machine, equipment or other contrivance described in paragraphs (b), (c), (d), or (e) of this section, if:

(i) The organic solvent content of such material does not exceed 30 percent by volume of said material; this to be effective until January 1, 1977. After January 1, 1977, the organic solvent content of such material must not exceed 20 percent by volume of said material.

(ii) The volatile content is not photochemically reactive as defined in paragraph (k) of this section, and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame. This last stipulation applies only for those articles, machines, equipment, or contrivances that are constructed or modified after the effective date of this section.

(j) For the purposes of this section, organic solvents include diluents, thinners, and reducers and are defined as organic materials that are liquids at standard conditions and are used as dissolvers, viscosity reducers, or cleaning agents, except that such materials exhibiting a boiling point higher than 220° F at 0.5 millimeter mercury absolute pressure or having an equivalent vapor pressure shall not be considered to be solvents unless exposed to temperatures exceeding 220° F.

(k) For the purpose of this section, a photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

(1) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation; 5 percent;

(2) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene, phenyl acetate, and methyl benzoate; 8 percent;

(3) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene; 20 percent.

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the

most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(l) For the purpose of this section, organic materials are defined as chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, and ammonium carbonate.

(m) Architectural coatings and their use shall conform to the following requirements, on or before January 1, 1975:

(1) A person shall not sell or offer for sale or use in the areas in which this section applies, in containers of 1-quart capacity or larger, any architectural coating containing photochemically reactive solvent, as defined in paragraph (k) of this section.

(2) A person shall not employ, apply, evaporate, or dry in the areas in which this section applies, any architectural coating purchased in containers of 1-quart capacity or larger containing photochemically reactive solvent, as defined in paragraph (k) of this section.

(3) A person shall not thin or dilute any architectural coating with a photochemically reactive solvent, as defined in paragraph (k) of this section.

(4) For the purpose of this section, an architectural coating is defined as a coating used for residential or commercial buildings and their appurtenances, or for industrial buildings.

(n) A person shall not during any one day dispose of a total of more than 1.5 gallons of any photochemically reactive solvent as defined in paragraph (k) of this section, or of any material containing more than 1.5 gallons of any such photochemically reactive solvent by any means that will permit the evaporation of such solvent into the atmosphere.

(o) Compliance schedule. (1) Except where other final compliance dates are provided in this section, the owner or operator of any stationary source subject to this section shall comply with this section on or before March 31, 1974. In any event:

(i) Any owner or operator in compliance with this section on the effective date of this section shall certify

such compliance to the Administrator no later than 120 days following the effective date of this section.

(ii) Any owner or operator who achieves compliance with this section after the effective date of this section shall certify such compliance to the Administrator within 5 days of the date compliance is achieved.

(p) Any owner or operator of a stationary source subject to paragraph (o) (1) of this section may, not later than 120 days following the effective date of this section, submit to the Administrator for approval a proposed compliance schedule that demonstrates compliance with the provisions in paragraph (o) (1) of this section as expeditiously as practicable but no later than July 31, 1975. The compliance schedule shall provide for increments of progress toward compliance. The dates for achievement of such increments of progress shall be specified. Increments of progress shall include, but not be limited to: Submittal of a final control plan to the Administrator; letting of necessary contracts for construction or process changes or issuance of orders for the purchase of component parts to accomplish emission control or process modification; initiation of onsite construction or installation of emission control equipment or process modification; completion of onsite construction or installation of emission control equipment or process modification and final compliance.

(q) Any owner or operator who submits a compliance schedule pursuant to this section shall, within 5 days after the deadline for each increment of progress, certify to the Administrator whether or not the required increment of the approved compliance schedule has been met.

§ 52.255 Gasoline transfer vapor control.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, and San Joaquin Valley Intrastate Air Quality Control Regions.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container

is equipped with a submerged fill pipe and unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily adapted to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.256.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Facilities that do not have more than a 20,000 gallons per day throughput and distribute less than 10 percent of daily volume to delivery vehicles that in turn service storage tanks that do not have a vapor return or balance system, will not be required to have a vapor recovery system in operation before January 1, 1977. Facilities that exclusively service delivery vehicles that in turn service storage tanks that do not have a required vapor return or balance system, will not be required to have a vapor recovery system.

(iv) Gasoline storage compartments of 1,000 gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfer made to storage tanks equipped with floating roofs or their equivalent.

(e) Compliance schedules:

(1) February 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps that will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) May 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) February 1, 1976—Complete on-site construction or installation of emission control equipment.

(5) March 1, 1976—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by

December 15, 1973. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after March 1, 1976. If promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(h) Any gasoline-dispensing facility subject to this section that installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by March 1, 1976 and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section that installs a storage tank after March 1, 1976, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.256 Control of evaporative losses from the filling of vehicular tanks.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Los Angeles, Sacramento Valley, and San Joaquin Valley Intrastate Air Quality Control Regions.

(c) A person shall not transfer gasoline to an automotive fuel tank from a gasoline dispensing system unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight vapor return line from the fill nozzle/filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, refrigeration-condensation system or its equivalent.

(e) Components of the systems required by paragraph (c) of § 52.255 can be used for compliance with paragraph (c) of this section.

(f) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features for a class of vehicles, the provisions of this paragraph shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing and using in the most effective manner a system required by paragraph (c) of this section.

(g) Compliance schedule:

(1) February 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps that will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) June 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment. Compliance with the requirements of paragraph (c) of this section shall be as soon as practicable, but no later than specified in paragraph (g) (4) and (5) of this section.

(4) May 1, 1977—Complete on-site construction or installation of emission control equipment or process modification.

(5) May 31, 1977—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph (g) shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by December 15, 1973. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by December 15, 1973, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1977. If promulgated by the Administrator, such schedule shall satisfy the requirements of this section for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(j) Any gasoline dispensing facility subject to this section that installs a gasoline dispensing system after the effective date of this section shall comply with the requirements of paragraphs (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (g) of this section as far as possible. Any facility subject to this section that installs a gasoline dispensing system after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.257 Computer carpool matching.

(a) "Carpool matching" means assembling lists of commuters with similar daily travel patterns and providing a mechanism by which persons on such lists may be put in contact with each other for the purpose of forming carpools.

(b) This section is applicable in the Metropolitan Los Angeles, San Francisco Bay Area, and San Diego Air Quality Control Regions; in the Fresno, San Joaquin, Stanislaus, and Kern counties of the San Joaquin Air Quality Control Region; and in the Sacramento, Placer, Yolo, and El Dorado counties of the Sacramento Valley Intrastate Air Quality Control Region (the "Regions").

(c) The State of California shall, unless exempted by the Administrator on the basis of a finding that equivalent service is being or will be provided by some other public or private entity, establish on or before January 1, 1975, a computer-aided carpool matching system that is conveniently available to the general public and to all employees of businesses within the Regions having more than 100 employees who operate light-duty vehicles on streets and highways over which the State of California has ownership or control. In the Los Angeles Region, however, the system need only, by January 1, 1975, cover employees in Los Angeles County and other cities in the Region having populations greater than 50,000, but it must be expanded to its full required scope by May 31, 1975.

(d) No later than July 1, 1974, the State of California shall furnish the Administrator with separate compliance schedules (including any necessary draft or adopted regulations) for implementing the requirements of paragraph (c) of this section in each of the Regions. The compliance schedule shall include:

(1) A method of collecting information that will include the following as a minimum:

(i) Provisions for each affected employee to receive an application form with a cover letter describing the matching program:

(ii) Provision on each application for applicant identification of time, origin, and destination, and the applicant's desire to ride only, drive only, or share driving;

(iii) A computer method of matching information that will have provisions for locating each applicant's origin and destination within the relevant Region, matching applicants with similar origins and destinations and travel schedules, and enabling the persons so matched to make contact with each other at the request of any one of them;

(iv) A method of providing continuing service such that the matched lists of all applicants are retained and made available for use by new applicants, application forms are currently available, and the master lists are periodically updated to remove applicants who no longer meet the governing criteria and add new applicants who do;

(v) An agency or agencies responsible for operating, overseeing, and maintaining the computer carpool matching system.

(e) No later than September 31, 1974, the State of California shall submit to the Administrator validly adopted regulations establishing the program outlined in each such compliance schedule.

(f) The State of California shall, in conjunction with the employers listed below, establish pilot programs for each region specified to assist it in developing the full-scale carpooling systems required by paragraph (c) of this section:

(1) In the San Diego Region—U.S. Navy Underwater Systems Center and the U.S. Navy Electronics Laboratory.

(2) In the San Francisco Region—U.S. Naval Base at Treasure Island, Alameda U.S. Naval Air Station, Presidio of the U.S. Army, and U.S. Naval Air Station at Moffet Field.

(3) In the Sacramento Valley Region—the McClellan Air Force Base, Sacramento.

(4) In the San Joaquin Valley Region—the Internal Revenue Service, Butler and Willow Avenues, Fresno.

(5) In the Los Angeles Region—the State shall cooperate with the City of Los Angeles to establish a pilot program for all employees in the Los Angeles central business district.

(g) The pilot programs listed in paragraph (f) of this section shall be implemented on the following schedule:

(1) On or before December 31, 1973, each employer or other entity subject to obligations under paragraph (f) of this section shall, together with the State of California, submit to the Administrator a compliance schedule conforming to the substantive requirements of paragraph (d) (1) of this section.

(2) No later than March 31, 1974, the pilot program shall begin operation.

§ 52.258 Mass transit priority—excluding bus use.

(a) This regulation is applicable in the San Diego Intrastate Air Quality Control Region.

(b) On or before October 30, 1974, the City of San Diego shall convert all lanes of Broadway, from Kettner Boulevard to 14th Street, in the City of San Diego, to the exclusive use of buses.

(c) On or before March 31, 1974, the City of San Diego shall submit to the Administrator a detailed compliance schedule showing the steps it will take to convert Broadway to the exclusive use of buses. The compliance schedule shall specify measures to prevent the use of Broadway by non-buses and shall provide for the establishment of a synchronized signal system to maintain traffic speed.

(d) No later than June 1, 1975, the City of San Diego shall submit to the Administrator a detailed compliance schedule in the form specified in paragraph (c) of this section for the conversion to the exclusive use of buses of a significant additional number of miles of street (based on studies available to the Administrator) unless other measures deemed equivalent by the Administrator are submitted. No later than January 31, 1976,

the City of San Diego shall put the program so outlined into effect.

(e) On or before October 30, 1974, the State of California shall begin to provide preferential traffic treatment for buses operating between the eastern terminus of the Broadway exclusive bus route established under paragraph (c) of this section and the entrances to State Highway 163.

(f) On or before March 31, 1974, the State of California shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish the required system of preferential treatment. This schedule may provide for the conversion of selected streets to the exclusive bus route established under paragraph (c) of this section and the entrances to State Highway 163.

(f) On or before March 31, 1974, the State of California shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish the required system of preferential treatment. This schedule may provide for the conversion of selected streets to the exclusive use of such buses, for the establishment of bus lanes, for metering of all other traffic using streets set aside for priority use by buses, or for any other such system acceptable to the Administrator.

§ 52.259 Ramp metering and preferential bus/carpool lanes.

(a) "Carpool" means a vehicle containing three or more persons.

(b) This regulation is applicable in the San Diego Intrastate Air Quality Control Region.

(c) On or before June 30, 1974, the State of California shall institute a program to grant preferential treatment to buses and carpools using the following sections of road:

(1) California State Highway 125 from Interstate 8 to the junction with California State Highway 94; and

(2) California State Highway 94 from the junction with California State Highway 125 to the junction with Interstate Freeway 5.

(d) On or before December 31, 1973, the State of California shall submit to the Administrator a detailed compliance schedule detailing the steps it will take to establish the preferential treatment system. The program shall include:

(1) A system of ramp metering designed to prevent the entrance of vehicles other than buses and carpools onto the designated road segments at any time when their entrance would have the effect of reducing the average speed at which buses and carpools travel. Such metering shall be established on each access ramp serving the designated highway segments provided that any given ramp may be exempted from this requirement if the State of California makes a showing satisfactory to the Administrator that the effect on average bus and carpool speed of installing such metering would be insubstantial.

(2) A system of bypass lanes designed to allow buses and carpools to avoid congestion or restrictions caused by the metering system described in paragraph (d)(1) of this section.

(3) A system of enforcement containing appropriate penalties for other vehicles to ensure that the bypass lanes are used only by buses and carpools.

(e) No later than September 30, 1975, the State of California shall implement a further system of preferential treatment for buses and carpools. Unless other measures deemed equivalent by the Administrator are submitted, this program shall at a minimum provide for the significant expansion based on studies to be designated by the Administrator of both the bus/carpool lane and the ramp metering systems.

(f) No later than March 30, 1975, the State of California shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish the preferential treatment system required under paragraph (e) of this section.

§ 52.260 Organic solvent usage. (Federal regulation adding to and replacing parts of Rule 66 of San Diego County)

(a) This section is applicable in that portion of San Diego County contained within the San Diego Intrastate Air Quality Control Region. This section is effective as of January 1, 1975.

(b) Rule 66 of San Diego County as contained in the local air pollution control district regulations for the San Diego County is hereby incorporated by reference in this plan and is amended by replacing subparagraph (1)(5), and adding in place thereof subparagraphs (5), (6), and (7). The amendment is as follows:

(5) The use of any material, in any article, machine, equipment, or other contrivance described in sections (a), (b), (c), or (e), if:

(i) The volatile content of such material consists only of water and organic solvents, and

(ii) The organic solvents comprise not more than 20 percent of volumn of said bulk content, and

(iii) The volatile content is not photochemically reactive as defined in section (n), and

(iv) The organic solvent or any material containing organic solvent does not come into contact with flame. This requirement is to be effective only for those articles, machines, equipment or contrivances covered by this regulation, and that are constructed or modified after the effective date of this regulation.

(6) The use of any material in any article, machine, equipment, or other contrivance described in sections (a), (b), (c), or (e) if:

(i) The organic solvent content of such material does not exceed 30 percent by volume of said material: This is to be effective until January 1, 1977. After such date the organic solvent content of such material must not exceed 20 percent by volume.

(ii) The volatile content is not photochemically reactive as defined in section (n), and

(iii) The organic solvent or any material containing organic solvent does not come into contact with flame. This requirement is to be effective only for those articles, machines, equipment, or contrivances that are constructed or modified after the effective date of this regulation.

(7) A person shall not during any one day dispose of a total of more than 1.5 gallons of any photochemically reactive solvent, as defined in paragraph (n) of this rule, or of any such photochemically reactive solvent, by any means that will permit the evaporation of such solvent into the atmosphere.

§ 52.261 Preferential bus/carpool lanes, San Francisco Bay Area.

(a) Definitions:

(1) "Bus/carpool lane" means a lane on a street or highway open only to buses (or buses and carpools), whether constructed especially for that purpose or converted from existing lanes.

(2) "Carpool" means a vehicle containing three or more persons.

(b) This regulation is applicable in the San Francisco Bay Area Intrastate Air Quality Control Region (the "Region").

(c) On or before May 1, 1974, the State of California, through the State Department of Transportation or through other agencies to which legal responsibility may have been delegated, shall establish upon at least three major highways having three or more lanes running in each direction, a system of bus/carpool lanes totalling not less than 45 miles running each morning and evening during the hours specified in paragraph (d)(5) of this section in the direction of maximum traffic flow.

(d) On or before December 31, 1973, the State of California shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish the system of bus/carpool lanes required by paragraph (c) of this section, with each chedule to include the following:

(1) Each street or highway that will have bus/carpool lanes must be identified with a schedule for the establishment of the lanes.

(2) Bus/carpool lanes must be prominently indicated by overhead signs at appropriate intervals and at each intersection of entry ramps.

(3) Bus/carpool lanes must be prominently indicated by distinctive painted, pylon, or physical barriers.

(4) Vehicles legally using the bus/carpool lanes shall have the right of way when crossing other portions of the road to enter or leave such lanes.

(5) The bus/carpool lanes required hereunder may be either concurrent flow or contraflow and, at a minimum, shall operate from 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m. each weekday.

(e) On or before May 31, 1975, the State of California shall implement a further bus/carpool lane program under which the total mileage of bus/carpool lanes required by paragraph (c) of this section shall, at a minimum, be doubled. On or before December 31, 1974, the State of California shall submit to the Administrator a detailed compliance schedule in the form specified by paragraph (d) of this section, indicating the measures it will take to establish this further program.

§ 52.262 Submittal of studies—San Francisco Bay Area.

(a) The State of California shall submit to the Administrator by December 31, 1973, a status report on all "corridor issues" presented in the San Francisco Metropolitan Transportation Commission Report of June 27, 1973. This status report shall include, but not necessarily be limited to:

(1) A complete description of the particular corridor issue study.

(2) The date of completion of the study.

(3) The total person-hours necessary for the study.

(4) The relevance of the study to automotive emission reductions.

(5) The status of the study as of December 31, 1973.

(6) The Administrator will evaluate this status report and determine if greater Federal participation is required for either resolution of the study conclusions or implementation of the study's recommendations.

§ 52.263 Priority treatment for buses and carpools—Los Angeles Region.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a lane on a street or highway open only to buses (or to buses and carpools), whether constructed especially for that purpose or converted from existing lanes.

(3) "Preferential treatment" for any class of vehicles, means either the setting aside of one traffic lane for the exclusive use of such vehicles or other measures (for example, access metering or setting aside the entire street), which the Administrator finds would be at least equal in VMT reduction effect to the establishment of such a lane.

(b) This regulation is applicable in the Metropolitan Los Angeles Intrastate Air Quality Control Region (the "Region").

(c) On or before May 31, 1974, the State of California, through the State Department of Transportation or through other agencies to which legal authority has been delegated, shall establish the following system of bus/carpool lanes.

(1) Ventura/Hollywood Corridor—a concurrent flow exclusive bus/carpool lane from Topanga Canyon Boulevard, Woodland Hills (U.S. 101) to junction of the Hollywood Freeway, and contraflow on the Hollywood Freeway (U.S. 101) from the junction with Ventura Freeway in North Hollywood to Vermont Avenue, and bus preferential treatment on arterial surface streets from

Vermont Avenue to the Los Angeles central business district (CBD).

(2) Harbor Freeway Corridor—contraflow on Harbor Freeway (California 11) from vicinity of Pacific Coast Highway, in Wilmington, to junction of Santa Monica Freeway (I-10), then by surface street preferential treatment to LA/CBD.

(3) Wilshire Corridor—surface street preferential bus treatment from vicinity of San Vincente Boulevard, to LA/CBD.

(4) San Bernardino Freeway Corridor—Bus/carpool lane, either contraflow or concurrent flow on San Bernardino Freeway from El Monte terminus of existing San Bernardino Freeway bus lane (I-10), to vicinity of Ontario Airport.

(5) Priority Treatment in CBD—provide preferential treatment in CBD on surface streets to connect Wilshire and San Bernardino corridors.

(d) On or before May 31, 1976, the State of California, through the State Department of Transportation or other agencies to which legal authority has been delegated, shall establish the following system of bus and bus/carpool lanes:

(1) Contraflow lane on the Golden State Freeway (I-5) from junction of Ventura Freeway (California 134) in Los Angeles to San Bernardino Freeway (I-10).

(2) Contraflow on Pasadena Freeway (California 11) from terminus in City of Pasadena to Hollywood Freeway (U.S. 101).

(3) Contraflow on Pomona Freeway from San Gabriel Freeway (I-605) to Santa Ana Freeway (I-5).

(4) Concurrent flow in San Diego Freeway (I-405) from Ventura Freeway (U.S. 101) in Sherman Oaks to Newport Freeway (California 55), Costa Mesa.

(5) Concurrent flow on Long Beach Freeway (California 7) from Santa Ana Freeway (I-5), City of Commerce to San Diego Freeway (I-405), Long Beach.

(6) Artesia Freeway (California 91) from Santa Ana Freeway (I-5) to Long Beach Freeway (California 7), Long Beach.

(e) Stage III will include specific routes in other portions of the Region.

(f) On or before December 31, 1973, the State of California shall submit to the Administrator a compliance schedule showing the steps it will take to establish the system of bus/carpool lanes required by paragraphs (c) and (d) of this section, with each schedule to include the following:

(1) A schedule for the establishment of the lanes. The schedule for the lanes required by paragraph (d) of this section shall provide for the first such lane to be set aside no later than June 1, 1974.

(2) Bus/carpool lanes must be prominently indicated by overhead signs at appropriate intervals and at each intersection of entry ramps.

(3) Bus/carpool lanes must be prominently indicated by distinctive painted, pylon, or physical barriers.

(4) Vehicles using a bus/carpool lane shall have the right of way when crossing other portions of the road to enter or leave such lanes.

(5) At a minimum. the bus/carpool lanes so set aside shall operate from 6:30 a.m. to 9:30 a.m. and from 3:30 to 6:30 p.m. each weekday.

(g) No deviation from the system of bus/carpool lanes required under paragraphs (c) and (d) of this section shall be permitted except upon application made by the State of California to the Administrator at the time of submittal of compliance schedules and approved by him, which application must contain a satisfactory designation of alternate routes for the establishment of such lanes.

§ 52.264 Mass transit priority strategy and planning.

(a) In this section and § 52.265, "Mass transit priority" means any preferential treatment that is given to mass transit operations and carpool versus the private single passenger automobile, in terms of access, rights-of-way, or any other appropriate measures.

(b) This section is applicable in the four county area of El Dorado, Placer, Sacramento, and Yolo contained in the Sacramento Valley Intrastate Air Quality Control Region.

(c) A study to determine the method or methods suitable for providing mass transit bus operation priority treatment on or in the vicinity of "J" Street in the City of Sacramento, shall be conducted by the State of California or a designated local or regional transportation authority. In addition to or as an adjunct to, the "J" Street study, the State of California or a designated local or regional transportation authority, shall investigate the present and near-term future (i.e. 1975 to 1977) need for priority treatment of mass transit buses in freeway and major thoroughfare operations in the four county area.

(1) The "J" Street portion of this study shall be completed and submitted to the administrator by March 31, 1974, shall outline a suitable transit priority strategy and shall present in detail the implementation timetables and obstacles associated with the strategy, so that the Administrator can review implementation progress. No later than September 30, 1974, the "J" Street mass transit priority strategy must be implemented.

(2) The "freeway and major thoroughfare" portion of the study shall be completed by March 31, 1974. Estimated implementation timetables and obstacles associated with likely strategies shall be outlined so that the Administrator can review and determine the need [for] and progress of implementation.

(3) With regard to both the "J Street" and the "freeway and major thoroughfare" sections of the study, general guidelines and criteria shall be established for determining the need for or appropriateness of providing mass transit priority in freeway, major thoroughfare, and local street operations, and a system of review for determining the need for implementing mass transit priority strategies shall be presented.

§ 52.265 Mass transit and transit priority planning.

(a) This section is applicable in the Standard Metropolitan Statistical Areas (SMSA's) of the cities of Fresno, Stockton, Bakersfield, and Modesto in the San Joaquin Valley Intrastate Air Quality Control Region.

(b) A study being sponsored by the State of California Department of Transportation is presently in progress and is scheduled for completion in January of 1974. This study will indicate the potential for public transit usage in the Fresno City area. Using this study and other appropriate information as a guide, the State of California or a designated local or regional transportation authority shall, by May 31, 1974, submit to the Administrator recommended mass transit strategies, including mass transit priority strategies, that are potentially useful and feasible in the time frame of the present to 1975 and 1977. The recommendation shall present in detail the implementation milestone timetables and the obstacles associated with the strategies so that the Administrator can review and determine the need for and progress of implementation.

(c) Studies shall be conducted in the Stockton, Bakersfield, and Modesto SMSA's by the State of California or by designated local or regional transportation authorities. These studies shall be completed and submitted to the Administrator by September 30, 1974, and shall recommend mass transit strategies, including mass transit priority strategies, that are potentially useful and feasible in the time frame of the present to 1975 and 1977. The recommendation shall present in detail the implementation timetables and obstacles associated with the strategies, so that the Administrator can review all available information and determine the need for and progress of implementation.

§ 52.266 Monitoring transportation mode trends.

(a) This section is applicable to the San Francisco Bay Area, Los Angeles, San Diego, San Joaquin Valley, and Sacramento Intrastate Air Quality Control Regions.

(b) The State of California or a designated agency approved by the Administrator shall monitor the actual per vehicle emissions reductions occurring as a result of the retrofit devices and inspection and maintenance programs required under §§ 52.242, 52.244, and 52.245, and the observed changes in vehicle miles traveled and average vehicle speeds as a result of traffic flow changes and reductions in vehicle use required under §§ 52.241 (if implemented), 52.243 (if implemented), 52.248, 52.249, 52.250, 52.251, 52.257, 52.258, 52.259, 52.261, 52,263, 52.264, and 52.265.

(c) No later than March 1, 1974, the State shall submit to the Administrator a detailed program demonstrating compliance with paragraph (b) of this section and in accordance with § 51.19(d) of this chapter. The program description shall include the following:

(1) The agency or agencies responsible for conducting, overseeing, and maintaining the monitoring program.

(2) The administrative process to be used.

(3) A description of the methods to be used to collect the emission reduction/VMT reduction/vehicle speed data, including a description of any modeling techniques to be employed.

(4) The funding requirements, including a signed statement from the Governor or State Treasurer or their

respective designees identifying the source and amount of funds for the program.

(d) All data obtained by the monitoring program shall be included in the quarterly report submitted to the Administrator by the State, as required by § 51.7 of this chapter, in the format prescribed in Appendix M to part 51 of this chapter. The first quarterly report shall cover the period January 1-March 31, 1975.

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Supreme Court, U. S.
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APPENDIX

Volume II—pp. 549-981

In the Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-909, 75-960, 75-1050 and 75-1055

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner

—*v.*—

EDMUND G. BROWN, GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.,

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

PETITIONS FOR CERTIORARI FILED DECEMBER 24, 1975, JANUARY 7, 1976 AND JANUARY 26, 1976
CERTIORARI GRANTED JUNE 1, 1976

In the Supreme Court of the United States

OCTOBER TERM, 1976

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ENVIRONMENTAL PROTECTION AGENCY,
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Arizona Transportation Control Plan

This rulemaking sets forth a transportation control plan for the Phoenix-Tucson Intrastate Air Quality Control Region (the "Region"). A General Preamble was published on November 6, 1973, in the FEDERAL REGISTER (38 FR 30626) and is incorporated herein by reference.

On March 20, 1973, the Administrator, acting in response to a court order, notified the Governor of Arizona that a transportation control plan for the Region should be submitted by April 15, 1973. On April 11, 1973, the State of Arizona submitted a proposed implementation plan control strategy to the Administrator. This plan demonstrated attainment of the oxidant standard by May 31, 1975. However, although several of the strategies included to control carbon monoxide were approvable in concept, they were not set forth in the required regulatory detail. Accordingly, on June 15, 1973, the Administrator disapproved the plan (38 FR 16555, June 22, 1973).

Because the Administrator disapproved the Arizona control strategies for carbon monoxide, the Administrator was required, under section 11(c) of the Clean Air Act, to propose and subsequently promulgate regulations setting forth substitute measures. Regulations for the attainment and maintenance of the national standards for carbon monoxide were proposed by the Administrator in the FEDERAL REGISTER of July 16, 1973 (38 FR 18942). Public hearings were held on the proposed regulations in Tucson on September 10 and 11, 1973, and in Phoenix on September 12 and 13, 1973.

The Governor of Arizona submitted a revised implementation plan control strategy on September 11, 1973. Notice of receipt of the revised Arizona plan was published in the FEDERAL REGISTER on October 26, 1973 (38 FR 29607). This notice was issued to solicit public comment on the plan prior to the Administrator's approval/disapproval decision. The closing date for public comment is November 16, 1973, which is also the deadline established by the Court of Appeals for promulgation of EPA's Arizona transportation control plan. Consequently, today's promulgation cannot be delayed to review public comment received on or near the closing date for comment.

The Administrator has reviewed the revised Arizona plan, supplemental information, and public comment received to date and finds that the inspection/maintenance and retrofit control measures are, for the most part, approvable as specified herein. Therefore, the Administrator has approved these measures with exceptions and conditions. Upon receipt of the remaining public comment, if any, the Administrator will issue an evaluation report of the Arizona plan and, if necessary, amend this approval and promulgation.

AIR POLLUTION IN THE PHOENIX-TUCSON REGION

Natural features. The Phoenix-Tucson Region is composed of the five Arizona counties of Maricopa, Gila, Pinal, Pima, and Santa Cruz. A total of 1,431,954 people reside in this region, 80.8 percent of the total state population. The region encompasses 29,753 square miles, 26.2 percent of the total state area. There are two major urban areas within the region: Metropolitan Phoenix in Maricopa County and metropolitan Tucson in Pima County. These areas contain 87.5 percent of the region's population. Both metropolitan areas are located at the northeast edge of the southwestern desert, which comprises about a third of the state and is typified by low mountain ranges and desert valleys. Phoenix and Tucson

are located about 120 miles apart with the elevation of Phoenix being 1117 feet and of Tucson, 2410 feet.

The climate of the two major metropolitan areas is quite similar, although Tucson temperatures are normally somewhat cooler because of its elevation. Tucson also has more rainfall. Both areas have a large number of days with clear skies and an abundance of sunshine. Average wind speeds in Tucson tend to be slightly higher than in Phoenix.

In the southwest desert areas where clear skies predominate, rapid heating of the surface occurs during the daytime. This rapid heating, in turn, produces an unstable atmospheric condition with good dispersion. Clear skies at night allow rapid cooling and lead to the formation of surface-based inversions.

Because of the longer nights and increased cooling, these inversions are stronger and more persistent in the winter than in the summer. National Weather Service records indicate that radiation inversions can be expected on about two-thirds of the winter nights. Low wind speeds appear to occur more frequently during the night, and the combination of surface inversions and light winds produces the stable atmospheric conditions that are conducive to the accumulation of pollutants near the ground.

Maricopa County records indicate that the highest carbon monoxide concentrations occur during the night in the winter months. This coincides with the period of highest frequency of stable radiation inversion conditions. Both the maximum 1-hour concentration and the maximum 8-hour concentration usually occur between 6:00 p.m. and midnight. In addition to the stable atmospheric conditions during these hours, traffic counts, using October as an example, indicate that there is more traffic in the 5-hour period centered around the evening peak hour (4:00 to 5:00 p.m.) than in the similar 5-hour period centered around the morning peak (7:00 to 8:00 a.m.). High carbon monoxide concentrations do occur during the morning traffic peak period; these concentrations, however, are generally short-lived because the atmosphere is rapidly becoming unstable because of daytime heating.

Thus, it would appear that high concentrations of carbon monoxide in these area are a function not only of total emissions, but also of the meteorological conditions that exist during the periods of highest emissions.

It should be noted that the dispersive characteristics of unstable midday atmospheric conditions could be used to reduce high evening carbon monoxide concentrations if measures were adopted that caused the evening peak traffic to occur earlier. The shifted emissions would then occur during a period of good dispersion. To help achieve this shift, employers could reschedule the work shift so that quitting time occurs at 3 p.m. Also, work hours staggered toward an earlier quitting time by a significant number of employers would shift the emissions and, in addition, lessen traffic congestion, which is a source of increased emissions due to stop and go operation. Use of daylight savings time during the winter months would effectively shift peak evening traffic 1 hour earlier with respect to the time of the nondispersive nighttime conditions. Such a measure would also result in significant energy savings.

Air quality monitoring in the region by the Maricopa County Health Department has consisted of one station located in Phoenix. At various times the Arizona Division of Air Pollution Control (DAPC) has in addition monitored air quality at different locations throughout the State using mobile equipment. The data from the mobile monitoring equipment cover short periods (24-hour periods to 4-month periods); the station located in central Phoenix has recorded data continuously since 1967. There has been no continuous air quality monitoring in the metropolitan Tucson area until recently when two monitoring sites were activated in a cooperative program between Arizona DAPC and Pima County Health Department. The State is in the process of procuring five additional carbon monoxide monitors for Phoenix. These monitors were funded by EPA and will be operated by the Maricopa County Health Department. Air quality data for 1 year, or at least for the seasonal period when high concentrations would normally be expected to occur, is required for analysis and selection of carbon monoxide control strategies. The only data available of sufficient duration to permit strategy calculations are those from the central Phoenix monitoring station.

The second highest 1-hour and 8-hour carbon monoxide concentration recorded in 1971 in the Phoenix-Tucson AQCR were 43.5 mg/m³ and 29.36 mg/m³. Use of a proportional rollback technique indicates that control measures adequate to ensure attainment of the 8-hour national carbon monoxide standard (10 mg/m³) will also ensure meeting the 1-hour standard (40 mg/m³). Rollback calculations show that a 66 percent reduction from 1971 carbon monoxide emissions is required to meet the national 8-hour standard.

The second highest 1-hour average concentration of photochemical oxidants recorded in the Phoenix-Tucson AQCR for the base year 1971 was 236 μg/m³. Using the relationship between hydrocarbon emissions and ambient photochemical oxidant concentrations as defined in Appendix J, 40 CFR Part 51, a 31 percent reduction from 1971 hydrocarbon emissions is required to meet the national standard of 160 μg/m³.

Information presented in the State Plan and in the EPA Technical Support Document (which is available at the Office of Public Affairs, EPA Region IX, 100 California Street, San Francisco, California 94111, and at the Freedom of Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460) shows that the anticipated decrease in motor vehicle hydrocarbon emissions as a result of the Federal Motor Vehicle Control Program and the decrease due to approved controls on stationary sources of hydrocarbons will be sufficient to meet the national standard by May 31, 1975, and to maintain the standard through 1980. Attainment of the carbon monoxide standards will not be achieved by these controls. Consequently, supplementary controls are required, and, since mobile sources will account for approximately 93 percent of the carbon monoxide emissions, additional controls on mobile sources are required.

State Transportation Control Plan

As noted previously, the State of Arizona submitted a transportation control plan on April 11, 1973.

Arizona's control strategy included provisions for mandatory annual inspection and maintenance on all light, medium, and heavy duty vehicles, the use of retrofit devices on pre-1976 vehicles, and the conversion of 10,000 vehicles to liquid petroleum gasoline.

The State plan concluded that these measures would achieve emission reductions sufficient to attain the standard. However, EPA analysis, presented in the EPA Evaluation Report, indicated that excessive emission reductions were claimed, and that, in fact, these measures were not sufficient to show attainment of the standard. Consequently, additional measures, which control vehicle usage and consequently total emissions from the vehicle population at large, were considered necessary. EPA calculated that the additional emissions reduction necessary to show attainment of the standard could be achieved with a 32 percent reduction in total vehicle miles traveled (VMT).

The difference between EPA estimates and those of the State centered primarily around the applicability and effectiveness of the catalyst retrofit. EPA's analysis did not support the State's claim that 100 percent of the 1968-1974 autos could be readily retrofitted with the catalyst. Not all vehicles in this age class can operate on the unleaded fuel necessary for catalyst function. Considering this limiting factor, EPA estimated that only 20 percent of 1968-1970 vehicles and 75 percent of the 1971-1974 vehicles could be retrofitted with catalyst converters (See An EPA White Paper: The Clean Air Act and Transportation Controls).

For the most part, reductions attainable by the remaining control measures of the State plan were considered realistic and generally approvable.

The transportation control plan, however, lacked the necessary procedures for enforcement and administration. Specifically, the State does not have legal authority for its inspection/maintenance program; there are no

regulations and administrative procedures for either inspection/maintenance or the retrofit program; and there is no monitoring and surveillance program. Similarly, the transportation control plan does not indicate that adequate resources have been allocated by the State for implementation of these measures.

On September 11, 1973, the Governor of the State of Arizona submitted a revised transportation control plan that included significant modifications to the earlier State plan.

The inspection maintenance program was essentially reproposed: however, the revised plan contained a claim that the post-maintenance deterioration curve is more realistic than EPA's, and that, as a result, the program could achieve a 22 percent reduction in carbon monoxide emissions rather than the 12 percent allowed by EPA. EPA had assumed the deterioration to be linear as a function of time, while the State indicated that the emission-reducing effectiveness of maintenance would not be gin to deteriorate until much later in the post-maintenance year, thus yielding higher overall emission reductions than would be assumed in a linear deterioration. Based on the analysis of data contained in the EPA Technical Support Document and data referenced by the Arizona Plan, EPA does not believe that the 22 percent reduction claimed by Arizona can be supported at this time.

The State's retrofit program was substantially modified. The use of oxidizing catalyst converters was restricted to 1973-1975 vehicles in accordance with EPA's information on the poor applicability of such devices to older vehicles. Application of the air bleed to the intake manifold device was reproposed for pre-1968 model years. Finally, the State proposed the application of a new air bleed/exhaust gas recirculation device on all 1968-1972 vehicles. The data do not support the applicability of this device on 1972 vehicles, and EPA cannot accept emission reductions attributed to that model year. The State is encouraged to evaluate possible retrofit alternatives.

In short, the revised State plan demonstrate [sic] better compatibility between retrofit devices and vehicles of each model year. Consequently, EPA can accept greater emission reductions for the State plan. However, as with the initial State plan, these measures are not sufficient to show attainment of the standard; the necessity for VMT reduction remains. Although the revised plan originally did not include any control measures for VMT reduction, the Governor acknowledged in his letter accompanying the plan that reasonable interim measures to reduce VMT must be adopted. Subsequent submittals on September 21 and October 2, 1973, indicated that the Governor's special task force is vigorously encouraging business and local government to develop carpool incentives; also being developed are parking restrictions, improvements in the public transit system, and traffic flow improvements.

EPA acknowledges that such measures are promising, and that the potential for substantial progress exists. Further, EPA recognizes the firm commitment on the part of State and local government to fully develop and implement such control strategies. At this point, however, some of Arizona's interim strategies have not been formulated to the point at which EPA can evaluate their effectiveness in reducing VMT, and, ultimately, carbon monoxide emissions.

Finally, the revised State plan, like the earlier version, lacks the necessary procedures for enforcement and administration, and adequate resources for effective implementation. Until this is done, EPA is promulgating the regulations, necessary to make the program submitted by the State effective. However, EPA is confident that the State will adopt whatever measures are necessary to carry out its program to a successful conclusion.

Proposed EPA Transportation Control Plan

In the Federal Register of July 16, 1973, the EPA proposed substitute regulations to show attainment of the carbon monoxide standard. Recognizing the effort and

progress made by Arizona in its inspection/maintenance retrofits program, the Administrator incorporated these individual control measures into EPA's proposal as viable measures to reduce vehicle emissions, and proposed them in accordance with the schedule set forth in the State plan. However, as these control measures were not sufficient to show attainment of the standard, EPA proposed additional measures designed to achieve the 32 percent reduction in VMT, which EPA considered necessary to attain the standard. EPA's proposal measures included bus/carpool lanes on freeways and major streets, 20 percent reduction in off-street public parking, and limitations on the construction of additional parking facilities—all supplemented by the required availability of a computer-aided carpool- and buspool-matching system. The intent of these measures was to discourage individual use of private vehicles. EPA calculated that these measures could increase the occupancy factor for work-oriented trips by 50 to 75 percent, and thereby reduce VMT by 10 to 15 percent by 1975.

To assure that this VMT reduction is achieved and to achieve an additional 10 to 15 percent reduction by 1977, EPA proposed to limit gasoline consumption (at the distributor level) to 1972-1973 levels, and to limit the motorcycle population to projected 1975 levels. The gasoline limitation was designed to retard the very rapid VMT growth expected after 1975; the restriction on motorcycle population was designed to prevent counter-productive shifts from automobiles to highly polluting motorcycles as a result of gasoline limitations and parking bans.

The measures proposed by EPA to control VMT were sufficient to demonstrate attainment of the standard. However, the inspection/maintenance and retrofit programs could not be implemented in time to meet the standards by 1975; therefore, a 2-year extension was necessary. To satisfy the remaining legal requirements for such an extension, the control strategy must consider reasonably available control measures for implementation as expeditiously as practicable. At the time the

EPA plan was proposed, the VMT reduction measures previously discussed were considered to be reasonably available control measures and sufficient to satisfy the requirements for a 2-year extension.

PUBLIC COMMENT

The EPA hearings in Phoenix and Tucson elicited substantial public comment regarding the control measures proposed by EPA; also, the State of Arizona used the hearings as an opportunity to present its revised transportation control plan. The State also affirmed its commitment to develop and implement effective VMT reduction measures.

Comments were received from a wide range of sources—regional and municipal governments, industry, civic organizations, environmental groups, and individual citizens. Generally, EPA's proposal for the State's inspection/maintenance and retrofit programs received solid support. However, EPA's VMT control measures received generally adverse comment. Many stated that such proposals were unrealistic in view of the area's high degree of dependence on automobiles and lack of alternative modes of transportation.

The workability of the measure for exclusive bus/carpool lanes was doubted. The point was made that without an expanded bus system, exclusive bus lanes would serve no beneficial purpose and that almost no streets could support viable bus lanes. Additional comments were received criticizing the inadequacy and inconvenience of the existing transit systems in both Phoenix and Tucson. Although representatives of these cities spoke of improvements in scheduling and expansion of the service area, commitments for purchase of buses for increasing the existing transit capacity system during the commuting period have not been made. Testimony indicated that the Phoenix bus system is presently at capacity during the commuting period. Substantial comment was received encouraging and supporting carpooling for commuters as the best solution to reduce VMT and congestion, particularly in the absence of a viable transit system.

The required availability of a voluntary computer-aided bus/carpool matching system, which was included in the revised State plan, was generally accepted. Several on-going programs for assisting employees to locate and form carpools were noted.

The parking reduction measure was criticized as having potentially adverse effects on downtown business. Similarly, the parking review proposal was thought to have adverse economic effects. In particular, it was said that such a regulation might threaten the growth of the central business district and the proposed Sky Harbor Airport expansion. Comments received on parking review proposals in other regions stated that EPA should allow state and local organizations the option of developing a parking management supply plan capable of achieving results that were equivalent to the proposed source-by-source review.

Restrictions on the ownership of motorcycles were opposed. Spokesmen for the motorcycle industry requested that EPA establish emission standards for motorcycles. Comment was added that if EPA should set such standards, any problem of motorcycles emissions would be substantially diminished.

Any limitations on the amount of gasoline sold were exposed. The possible adverse impact on agricultural operations was cited. Further, the reduction or control would drastically affect the growth economy, and would not accommodate a continuation of the unprecedented growth that occurred over the last several years.

Environmental groups in both cities generally supported EPA's proposals, and often suggested additional measures such as bicycle paths, mass transit improvements, and land-use controls. One spokesman concluded his statement with words that generally reflect the tenor of the testimony: "Any regulation adopted must have the support of the public."

Considerable comments was received on the applicability of the EPA proposal to the entire Region. The point was made that it can not be shown that there are violations of the national standard in the many communities

spread across the five-county region and that auto usage in these communities also could not be shown to contribute to the air pollution problems of Phoenix and Tucson. Therefore, transportation control measures should only apply to the Phoenix and Tucson Metropolitan Areas not the five-county region.

The fact that the amount of reduction for Tucson was based on Phoenix data because of the lack of air quality data for Tucson was of concern to a significant number of those testifying at the hearing in Tucson. Data derived from monitoring during the summer months of 1973 in Tucson and from use of atmospheric diffusion models was presented by the Pima County Air Pollution Control District. These data show that in 1977 the 8-hour carbon monoxide standard would be substantially exceeded. The value derived for the maximum 8-hour concentration in 1977 was 21 mg/m^3.

A transportation control plan also designed to attain the standard by 1977 was submitted by the Pima County Air Pollution Control District at EPA's hearing in Tucson.

This plan relied on the measures in the State plan (namely inspection/maintenance and retrofit) and included increasing the use of carpools, increasing bus service, implementing a computerized traffic control system, instigating a public education effort, and implementing a continuous air quality monitoring program.

Transportation Control Plan

The EPA promulgation is a combination of approval of the Arizona Plan, and promulgation of portions of the EPA proposal as modified by the revised State plan and by testimony received at the hearings. EPA is taking action to approve the plan proposed by the State, specifically, the inspection/maintenance, retrofit, employer incentive, and carpool matching programs; simultaneously, EPA is promulgating certain requirements to assure the effectiveness and implementation of the approved State plan. This combination of approval and promulgation

constitutes a complete and viable transportation control plan that satisfies the requirements of the Clean Air Act.

Each specific control measure of both the State plan and the EPA promulgation are described in the following paragraphs.

State plan: Inspection/maintenance program. An inspection/maintenance program has been initiated by the State of Arizona and is being approved by EPA in this plan. This program will require owners of light-duty and medium-duty vehicles to have their vehicles inspected and any needed maintenance performed every year. According to the State plan, the program will commence on July 1, 1975. EPA is requiring several submissions during the development of the inspection program as follows: draft legislation to be submitted by February 1, 1974; legislative authority to be established by May 1, 1974; and regulations to be adopted by September 1, 1974. These dates are necessary to effect the commitment to obtain legislation during the 1974 session of the Arizona legislature.

State plan: Retrofit program. As with the inspection/maintenance program, this control measure has been initiated by the State of Arizona and is being approved by EPA. The State will require that all pre-1976 light-duty vehicles be retrofitted with an appropriate emission-reducing device (1) On pre-1968 vehicles, an air bleed to the intake manifold will be installed, beginning on July 1, 1975. This device increases the air/fuel mixture by metering additional amounts of air to the manifold; the result is a leaner fuel mixture and more complete combustion resulting in fewer emissions. (2) Commencing on July 1, 1975, vehicles in the 1968-71 model years will be controlled using an air/bleed exhaust gas recirculation device. The operation is similar to the air bleed device mentioned previously. (3) Finally, oxidizing catalyst converters are to be installed on 1973-1975 vehicles able to operate on 91 octane unleaded gasoline. Implementation of the oxidizing catalyst aspect of the retrofit strategy will begin June 1, 1976. As with the inspection program, EPA is requiring several submissions concurrent with

the development of the retrofit program. In particular, EPA is requiring draft regulations for the retrofit devices by February 1, 1974, and adopted regulations by September 1, 1974.

State plan: Employer carpool incentive program. As part of the Arizona Plan, Arizona submitted details of a program to develop and implement an employer incentive program. EPA is approving this program and is setting certain program requirements. The employer carpool incentive program is a new regulation designed to encourage the use of carpools and mass transit and discourage employees from riding to work alone in their automobiles. The program requires an employer who maintains more than 200 employee parking spaces to provide an incentive program. Each employee carpool incentive program is to be submitted to the State by February 1, 1974. Approval or disapproval will be announced by EPA by June 1, 1974. On August 1, 1974, EPA will prescribe a plan for each employer in the above categories who does not submit an approvable plan. All plans will become effective on September 1, 1974. EPA envisions employer incentive plans to contain incentives such as preferential or covered parking for carpools, charges for use of parking spaces by single passenger automobiles, reductions in the number of parking spaces, subsidies to employees who use mass transit, and/or provision of special charter buses. EPA will evaluate each plan in terms of the effectiveness of the incentives in achieving an increase in the occupancy factor. EPA believes an occupancy factor of two is a reasonable goal.

The incentive program requirements will apply to employers in the highly traveled portions of Phoenix and Tucson.

State Plan: Bus/carpool matching program. EPA is also approving the implementation of a bus/carpool matching program. The purpose of the bus/carpool matching program is to assist commuters who desire to form carpools, or where there are sufficient commuters, to form buspools. Participation in the program would be voluntary. Each participant in the program would be

provided with a listing of names and work phone numbers of all other participants who have similar origins and destinations and whose work hours most nearly match their own. The availability of the matching program is phased to include: a demonstration program to make the carpool matching service available to 10,000 employees in the State Capital area of Phoenix and to 2,000 employees in the central business district of Tucson. This phase is to be in operation by March 1, 1974; the program will be extended to include all employees in businesses having more than 200 employees in metropolitan Phoenix and Tucson by September 1, 1974; and, finally, the program will be made available to employees of smaller firms (50 or more employees) in both areas by September 1, 1975.

EPA promulgation: Management of Parking Supply. This regulation will require approval before construction begins for any new or modified parking facility with new capacity or an increase in capacity of 50 or more vehicles. An application requiring information pertinent to assessing the effect on local air quality and VMT in the Metropolitan Phoenix Area and the City of Tucson must be approved by EPA or by an EPA-approved agency. Provision is made for public comment prior to a final decision. As an alternative to instituting review of each parking facility, any local jurisdiction may submit a 5-year comprehensive parking management plan. To be approved, this plan will have to demonstrate that when carried out it will have an effect comparable to a review of each parking facility.

EPA Promulgation: Monitoring transportation trends. In addition to monitoring air quality, EPA will require transportation trend monitoring. This will be accomplished to assure the effectiveness of the inspection and maintenance program and the retrofit program. This regulation requires that the State monitor the actual per-vehicle emissions reduction achieved as a result of the plan. Monitoring of VMT, average vehicle speeds, and occupancy factor in the Metropolitan Phoenix Area and the City of Tucson is also required to evaluate the effective-

ness of the employer carpool incentive program and traffic flow improvements. Reports are required quarterly starting with the period from July 1 to September 30, 1974.

FINDINGS

The Clean Air Act requires that national ambient air quality standards be achieved as expeditiously as practicable. The EPA approved and promulgated measures are sufficient to attain the standards. However, attainment is not possible by 1975. The catalyst retrofit program cannot be implemented until 1976, with full emission reductions unattainable until 1977. Although both the remainder of the retrofit program and the inspection/maintenance program will be implemented in mid-1975, the full annual cycle necessary to achieve the projected emission reduction will not be completed by the end of 1975. Therefore, the standard cannot be achieved until 1977. Because all reasonable and available interim measures will be implemented, a 2-year extension is justified and necessary.

Measures not promulgated. There are four measures which EPA has previously proposed, but which are not included in this promulgation. First, the proposed restrictions on motorcycle registration met considerable opposition at the public hearings. Also motorcycle industry spokesmen presented testimony to the effect that emission standards are necessary and that EPA should set them. EPA currently anticipates that such standards will be established in time for the 1976 model year. In view of this, EPA has reevaluated this measure and has determined that it is not reasonable at this time.

Secondly, EPA's proposed measure requiring a reduction in the number of public parking spaces was not supported at the hearings. Testimony presented by city officials indicated that most public parking is associated with downtown areas. Because of this, the measure would affect those who work and shop in the downtown area and park in public parking. Since the air quality problem is associated with the urbanized portions of both cities and not just the downtown areas, this measure has

been replaced by measures that affect parking in larger areas. These replacement measures are the employer incentive program, which affects the availability or attractiveness of employee parking, and the management of parking supply, which reviews the construction or modification of all parking.

Thirdly, EPA's proposal to establish exclusive bus/carpool lanes is not being promulgated because no segment of the street network could be identified as capable of supporting a viable bus or carpool lane.

Finally, the proposed limitations on gasoline consumption was opposed by many hearing witnesses. EPA intended that this admittedly harsh measure be implemented only after all other control measures proved ineffective. Its purpose was to compensate for shortcomings in the emission-reducing effectiveness of the other control measures. Because EPA is now approving Arizona's retrofit program, which achieves much higher emission reductions, the gasoline restriction measure is not needed to show attainment of the carbon monoxide standard and will not be promulgated.

Additional VMT reduction proposals that go beyond those of EPA were suggested in the hearings, such as bicycle paths, mass transit improvements, and land-use controls. EPA believes that all such measures are constructive and capable of achieving significant improvements in air quality.

Although, EPA selected those strategies that were capable of achieving large-scale emission reductions in a relatively short time, the Agency strongly encourages local government and interest groups to develop strategies to supplement the promulgated control programs.

COMPILATION OF CONTROL STRATEGY EFFECTS

Table 1 shows a compilation of control strategy effects. As can be seen, the national standards for carbon monoxide are attained by 1977 and maintained through 1980.

TABLE 1

CONTROL STRATEGY EFFECTS IN PHOENIX-TUCSON AQCR

Source and control measures	Emissions and reduction tons/day		
	1975	1977	1980
Mobile source emissions without proposed control measures	656.5	522.2	338.3
Expected reductions:			
Inspection/maintenance		—62.7	—40.6
Retrofit devices:			
Catalytic converter (1973-1975)		—58.1	—43.2
Exhaust gas recirculation (1968-1971)		—69.2	—28.7
Air bleed (pre-1968)		—70.8	—42.5
VMT reduction measures	—63.0	—25.2	
Motorcycles	14.0	16.8	18.6
Heavy-duty vehicles	69.6	82.3	98.6
Inspection/maintenance		—9.3	—11.4
Other (stationary, aircraft, etc)	25.7	28.7	31.5
Total emissions remaining	702.8	351.7	320.6
Allowable emissions for attainment of CO standards	351.7	351.7	351.7
Estimated second-high 8-hour CO concentration	[1]20.0	[1]10.0	[1]9.1
National 8-hour CO standard	[1]10	[1]10	[1]10

[1] Milligrams per cubic meters.

BASIS FOR REDUCTIONS CLAIMED

As has been previously discussed, the transportation control plan submitted by the State of Arizona shows sig-

nificantly more reduction for inspection/maintenance and retrofit than has been claimed in this promulgation. The difference is primarily due to the amount of reduction that can be achieved by a loaded inspection program. The average reduction percentage for this program is calculated by the Arizona DAPC to be 22.2 percent of the carbon monoxide emissions from light-duty vehicles. EPA has calculated the reduction to be 12 percent. The difference in the two values results from different estimations of the rate of deterioration between maintenance events. EPA evaluation of the data presented by Arizona to support its claim is that the data do not specifically relate to deterioration when mandatory inspection is required. Although the arguments of Arizona's automotive experts may have merit, EPA policy requires use of the estimated emission reductions contained in Appendix N of 40 CFR, Part 51, except when emissions reductions can be supported by adequate analysis and data. Therefore, reduction values for Appendix N have been used for estimating the effect of an inspection program.

The percentage reductions (50 percent) attributed to use of the catalytic and air bleed retrofit devices are based on information contained in Appendix N. The effectiveness of the exhaust gas recirculation retrofit (40 percent) for 1968-1971 light-duty vehicles was established from limited technical data computed both by EPA and by the manufacturer of one of the devices. Although the data base is small, it is supported by technical judgment.

It has been noted that implementation of the State-selected strategies of inspection/maintenance and retrofit devices by 1977 results in emissions in excess of the allowable emissions. The excess emissions can be negated by a reduction in VMT by light-duty vehicles of approximately 9.6 percent. The VMT reduction measures must therefore achieve this reduction. It is highly desirable to select VMT reduction measures that will be least disruptive to individual mobility and habits and most effective in reducing VMT.

The employee incentive regulations conform to this description for several reasons. First, work trips constitute the largest single class of trips within the Metropolitan

Phoenix Area by a factor of more than two: approximately 40 percent of urban travel is work-oriented, 10-20 percent is shopping-oriented, and 11-22 percent is social-recreational. (See Transit and the Phoenix Metropolitan Area, Maricopa County Association of Governments, which is available at EPA Region IX, 100 California Street, San Francisco, California 94111.) Therefore, any strategy affecting work-related VMT would potentially have the greatest reduction. Second, work trips have a definite pattern defined by a specific origin and destination and occur at a specific time each weekday. Carpooling by work commuters with identical origins, destinations, and times is therefore possible without disrupting mobility patterns of individuals as severely as would disrupting shopping, social-recreational, or business trips. Another important aspect is the effectiveness of reducing the work trip VMT because of the significance of the timing of the work trip. This is due to the fact that the highest concentrations of carbon monoxide occur in the evening hours during the winter months when a surface inversion occurs just prior to the evening peak traffic (caused primarily by work VMT) and produces stable atmospheric conditions that promote accumulation of the resultant automobile pollutants.

Specific reduction values for control measures that have the effect of reducing VMT for the Phoenix or Tucson metropolitan areas are not known. It is possible, however, to estimate the percentage reduction in VMT of all urban trips resulting from an increase in work trip occupancy factor (number of persons per vehicle). Once the decrease in total VMT is known for various increases in work trip occupancy factors, the occupancy factor corresponding to the required VMT reduction can be evaluated for realistic attainment in terms of each selected control measure.

Using an estimated occupancy factor of 1.2 persons per vehicle and an estimate that 40 percent of urban travel is work-oriented (see above), the areawide VMT reductions can be achieved for increases in the work trip occupancy factor as noted in Table 2.

TABLE 2

New work trip occupancy factor	Increase in work trip occupancy factor, percent	Reduction in VMT of all urban trips, percent
1.4	16.7	5.7
1.5	25	8
1.6	33.3	10

As noted previously, a VMT reduction of 9.6 percent is required. This percentage reduction corresponds to a new work-trip-occupancy-factor of approximately 1.6, which is a 33.3 percent increase. In other words, about one out of every four cars would be removed from the work trip and consequently the occupants of one out of every four cars would be carpooling with the remaining three during the work-related trips.

The first phase of the employer carpool incentive program will affect approximately 30 percent of all employed persons (those in businesses with 200 employee parking spaces). Attainment of an occupancy factor of 2 for those employees will achieve an overall work trip occupancy factor of about 1.4, or, as shown above, a 5 percent reduction in VMT for all urban trips. The second phase of the employer carpool incentive program will extend to all employed persons in businesses with 70 employee parking spaces. The expected effect of the second phase is to raise the work trip occupancy factor to about 1.6 for 10 percent reduction in VMT for all urban trips. The 10 percent VMT reduction can be achieved by attaining an occupancy factor of 2 for 60 percent of all employed persons.

VMT reductions in a future year are calculated from a growth curve, rather than from current levels. The regulation for the review of new parking lots should contribute to VMT reduction by preventing the construction of the new parking lots that cause violations of air quality standards. These parking lots would have been a

part of the VMT growth curve. This measure should provide a vehicle for maintaining the air quality standards once they have been achieved.

Economic and Social Impacts of Promulgated Control Strategy

In discussing the impacts of the transportation control plan, it is helpful to understand that the control measures fit into two categories: measures that place control at the source, such as inspection/maintenance and retrofits; and measures that control the total mileage traveled by the vehicle population at-large, such as carpooling and management of parking supply.

Impacts associated with the first class of control measures are primarily economic. The automobile owner will incur directly the cost of annual inspection (approximately $5) and post-inspection maintenance (between $1 and $31), which may be necessary on an annual basis. Such maintenance may result in greater fuel economy and savings. It should also be noted that the program is self-supporting: the $5 inspection fee will cover the operating costs outlay for inspection equipment.

The automobile owner will also incur direct out-of-pocket expenses when he retrofits his vehicle. For the oxidizing catalyst (vehicle model years 1973-1975), this cost will be approximately $90 to $140; for air bleed/exhaust gas recirculation (1968-1971), approximately $35 to $45. In addition, there will likely be costs incurred for replacement, although the frequency of replacement cannot yet be determined.

The impacts associated with carpooling and management of parking supply are much more difficult to quantify. However, the following assumptions regarding carpooling are reasonable: commuters can realize substantial savings by sharing fuel and parking costs; and, for many families, carpooling may eliminate the need for a second automobile. Both the carpooling program and the parking management supply plan may stimulate more effective land use planning efforts.

On the larger scale, the primary impacts will be cleaner air, diminished health problems, and improvements in the quality of life. In a more immediate sense, these measures are significant in terms of the nation's present energy crisis. The automobile is extraordinarily wasteful of energy and resources, particularly if that automobile transports only one person. Four to five empty seats in each automobile that transports only one person represent an enormous amount of available transportation capacity, and more importantly, a vast unused national resource as well. The carpooling strategies in Arizona and around the country will utilize this available transportation capacity and tap this national resource.

Over 25 percent of the nations energy consumption is used for transportation, with 75 percent of this, or 20 percent of the total, used by automobiles and other motor vehicles. Seventy-five percent of the energy used by automobiles is wasted due to the inefficiency of the automobile engine. In addition, the remaining quarter of the energy is largely wasted in any functional sense, since most American cars are far too big and heavy for their usual job of moving one or two people about.

Effective Date

These regulations promulgated today become effective on December 31, 1973, except in the case of those regulations that impose requirements for specific action at earlier dates. In such cases, the Administrator has found that good cause exists for accelerating the effective date because of the need to take action as expeditiously as practicable in order to attain and maintain the national ambient air quality standards. The regulation for management of parking supply is effective immediately upon publication and, pursuant to court order and previously

published notice, applies to actions taken after August 15, 1973.

(42 U.S.C. 1857c-5(c) and 1857g

Dated: November 21, 1973.

RUSSELL E. TRAIN,
Administrator.

Subpart D of Chapter 1, 40 CFR Part 52 is amended as follows:

Subpart D—Arizona

1. Section 52.120 is amended by revising paragraph (c) to read as follows:

§ 52.120 Identification of plan.

* * * *

(c) Supplemental information was submitted on:

(1) March 1, March 2, and May 30, 1972, by the Arizona State Board of Health.
(2) April 11, 1973, and May 10, 1973.
(3) September 11, 1973, by the Governor, and;
(4) September 21, 1973, and October 2, 1973.

2. Section 52.122 is amended by adding paragraph (d) to read as follows:

§ 52.122 Extensions.

* * * *

(d) The Administrator hereby extends for 2 years the attainment date for the national standards for carbon monoxide in the Phoenix-Tucson Intrastate Air Quality Control Region.

3. Section 52.123 is revised to read as follows:

§ 52.123 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approved Arizona's plan for the attainment of the national standards.

(b) With regard to the transportation control strategies submitted by the State of Arizona, the Administrator approves the inspection program for light-duty and medium-duty vehicles; the program for retrofit of air bleed devices on pre-1968 light-duty vehicles, the retrofit of air bleed/exhaust gas recirculation devices on 1968 through 1971 light-duty vehicles, the retrofit of oxidizing catalytic converters on 1973 through 1975 light-duty vehicles, the gaseous fuel conversion program; the carpool matching program; and the employer carpool incentive programs with the exceptions set forth in § 52.130, § 52.132, § 52.135, and § 52.136.

§ 52.131 [Amended]

4. In § 52.131, the attainment date table is revised by replacing the date "May 31, 1975, d" for attainment of the standards for carbon monoxide in the Phoenix-Tucson Intrastate Air Quality Control Region with the Date "May 31, 1977"; and by revoking and reserving footnote "d".

§ 52.132 [Reserved]

5. Section 52.132 is revoked and reserved.

6. Subpart D is amended by adding § 52.132 to read as follows:

§ 52.132 Transportation control compliance schedule.

The requirements of 51.14 are not fully met with respect to transportation control measures.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles that need emission control related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb GVW or less.

(3) "Medium-duty vehicle" means a gasoline-powered vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Air bleed control device" means a system or device (such as a modification to the engine's carburetor) that results in engine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1967 and earlier light-duty vehicles of at least 21 and 58 percent respectively.

(5) "Air bleed/exhaust gas recirculation device" means a system or device (such as modification of the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reductions of hydrocarbons and carbon monoxide of 25 percent and 40 percent, respectively, from light-duty vehicles of model years 1968 through 1971.

(6) "Oxidizing catalyst" means a device installed in the exhaust system of the vehicle that utilizes a catalyst and, if necessary, an air pump to reduce emission of hydrocarbons and carbon monoxide by 50 percent from that vehicle.

(7) All other terms used in this paragraph that are defined in Appendix N to Part 51 of this chapter, are used herein with the meaning therein defined.

(b) This section is applicable in Maricop [sic] and Pima Counties in the Phoenix-Tucson Intrastate Region.

(c) To implement the approved control measures specified in Sections 5 and 7 of the plan submitted September 11, 1973, and to complete the requirements of §§ 51.11 (b), 51.14 and 51.15 of this chapter, the State of Arizona must submit to the Administrator:

(1) No later than February 1, 1974, detailed compliance schedules showing the steps the State of Arizona will take to establish and enforce the inspection and maintenance program for light-duty and medium-duty vehicles; the program for retrofit of air bleed devices on pre-1968 light-duty vehicles, of air bleed/exhaust gas recirculation devices on 1968 through 1971 light-duty vehicles, and of oxidizing catalytic convertors on 1973 through 1975 light-duty vehicles; and the gaseous fuel conversion program. These schedules shall include:

(i) The text of proposed legislation and regulations for the inspection and maintenance program, the gaseous fuel conversion program, and the light-duty vehicle retrofit programs.

(ii) A signed statement from the governor or his designee identifying the sources and amounts of funds for the programs. If funds can not legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

(iii) The date by which the State will recommend all needed legislation to the State legislature.

(iv) The date by which necessary equipment for the inspection and maintenance and carpool matching program will be ordered.

(2) No later than May 1, 1974, the legislative authority for implementing the inspection and maintenance program and the gaseous fuel conversion program.

(3) No later than September 1, 1974, the adopted regulations and administrative policies necessary for implementation of the control measures cited in paragraph (c) (1) of this section.

(4) No later than January 1, 1974, a compliance schedule for the employee carpool incentive program outlined in section 8 of the State of Arizona Air Pollution Control Implementation Plan, Transportation Control Strategies. This compliance schedule shall conform to the requirements of § 52.137.

(5) No later than January 1, 1974, a compliance schedule for the carpool matching program. This compliance schedule shall conform to the requirements of § 52.138.

(d) The regulations adopted to implement the approved inspection and maintenance program referred to in paragraph (c) (1) of this section shall include as a minimum [sic]:

(1) Provisions for inspection of all such motor vehicles at periodic intervals at least once each year by means of an emission test having a loaded mode test cycle.

(2) Provisions for inspection failure criteria consistent with the failure of 50 percent of the vehicles tested during the first inspection cycle.

(3) Provisions to require that failed vehicles receive, within 30 days, the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against noncomplying individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement, such as a spot check of idle adjustment, to ensure that, following maintenance, vehicles are not subsequently readjusted or modified in such a way as would cause them to no longer comply with the inspection standards. This program shall include appropriate penalties for violation.

(5) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(6) Requirements that the State, after July 1, 1975, shall not register or allow to operate on its highways any light-duty or medium-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to the approved inspection and maintenance program and to paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(7) Requirements that after July 1, 1976, no owner of a light-duty vehicle shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures adopted pursuant to the approved inspection and maintenance program and to paragraph (d) of this section. This shall not apply to the initial registration of a new motor vehicle.

(8) The State may exempt any class or category of vehicles that the State finds are rarely used on public streets and highways (such as classic or antique vehicles).

(e) The regulations adopted to implement the approved retrofit programs referred to in paragraph (c) (1) of this section shall include as a minimum:

(1) Requirements that on or before May 3, 1977, all gasoline-powered fleet vehicles, and all private light-duty vehicles of 1973 through 1975 model years subject to registration in Maricopa and Pima Counties, shall be equipped with an appropriate oxidizing catalyst control device.

(2) Requirements that on or before August 1, 1976, all gasoline-powered, light-duty vehicles of model year 1968 to 1971 subject under presently existing legal requirements to registration in Maricopa and Pima Counties, shall be equipped with an air bleed/exhaust gas recirculation control device.

(3) Requirements that on or before August 1, 1976, all gasoline-powered, light-duty vehicles of model years prior to 1968 subject to registration in Maricopa and Pima Counties, shall be equipped with an appropriate air bleed device. The State may exempt any class or category of vehicles that the State finds are rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air bleed retrofit devices are not commercially available.

7. Subpart D is amended by revising § 52.136 to read as follows:

§ 52.136 Control strategy: Carbon monoxide.

(a) The requirements of § 51.14 of this chapter are not met because the plan does not contain sufficient measures to provide for attainment and maintenance of the national standards for carbon monoxide in the Phoenix-Tucson Intrastate Region as expeditiously as practicable.

(b) The requirements of § 51.14(a) and (b) of this chapter are not met because the plan does not provide a description of enforcement methods, administrative policies, and proposed rules and regulations pertaining to the selected transportation control measures.

(c) (1) The State-submitted inspection and maintenance program is disapproved to the extent it provides for inspection and maintenance of vehicles of over 10,000 lb GVW.

(2) The State-submitted air bleed/EGR retrofit program is disapproved to the extent it provides for the retrofitting of such devices on 1977 model vehicles.

8. Subpart D is amended by adding §§ 52.137, 52.138, 52.139, and 52.140 as follows:

§ 52.137 Employer carpool incentive program.

(a) Definitions:

(1) "Metropolitan Phoenix Area" means the area bounded on the south by I-17 and Buckeye Road to the intersection with I-17, on the east by 48th Street, on the north by the Arizona Canal and Glendale Avenue, and on the west by 43rd Avenue.

(2) "Greater Tucson Area" means an area bounded by a line starting at the intersection of Sweetwater Drive and Silverbell Road, thence 6 miles east, thence 1.5 miles south, thence 5.5 miles east, thence 7.5 miles south, thence 4.5 miles west, thence 3 miles south, thence 5 miles west, thence 5 miles north, thence 2 miles west, thence 7 miles north to the point of origin.

(b) This section is applicable within the Metropolitan Phoenix and Greater Tucson areas in the Phoenix-Tucson Intrastate Air Quality Control Region.

(c) On or before January 1, 1974, the State of Arizona shall submit to the Administrator a compliance schedule implementing the approved employer carpool incentive program. This compliance schedule shall at a minimum, provide that each employer in areas specified in paragraph (b) of this section who maintains more than 200 employee parking spaces shall, on or before February 1, 1974, submit to the State of Arizona an adequate incentive program designed to encourage the use of carpools and mass transit and discourage employees from using single-passenger automobiles to commute to work. Each program shall contain provisions for preferential parking, covered parking, and other benefits to

employees who travel to work by carpool; subsidies to employees who use mass transit; reductions in the number of employee parking spaces or surcharges on the use of such spaces by employees; provision of special charter buses or other modes of mass transit for the use of employes; and/or any other measures acceptable to the Administrator. By April 1, 1974, the State of Arizona shall submit each program so received, together with the State's evaluation of the program and the State's recommendation as to whether that program should be approved or disapproved, to the Administrator.

(d) On or before June 1, 1974, the Administrator shall approve or disapprove each program so submitted. Notice of such approval or disapproval shall be published in this Part 52.

(e) In order to be approvable by the Administrator, each program shall contain procedures whereby the employer will supply the State of Arizona and the Administrator with semiannual certified reports that shall show, at a minimum the following information:

(1) The number of employees at each of the employer's facilities within the areas specified in paragraph (b) of this section on October 15, 1975, and as of the date of the report.

(2) The number of (i) free and (ii) non-free employee parking spaces provided by the employer at each such employment facility on October 15, 1973, and as of the date of the report.

(3) The number of employees regularly commuting to and from work by (i) private automobile, (ii) carpool, and (iii) mass transit at each such employment facility on January 1, 1974, and as of the date of the report.

(4) Such other information as the Administrator may prescribe.

(f) If, after the Administrator has approved a carpool incentive program, the employer fails to submit any reports in full compliance with paragraph (e) of this section, or if the Administrator finds that any such report has been intentionally falsified, or if the Administrator determines that the program is not in operation

or is not providing adequate incentives for employee use of carpools and mass transit, the Administrator may revoke the approval of such plan. Such revocation shall constitute a disapproval.

(g) By July 1, 1974, the Administrator shall prescribe a carpool incentive program for each employer to whom paragraph (b) of this section is applicable if such employer has not submitted a program. By August 1, 1974, the Administrator shall prescribe a carpool incentive program for each employer to whom paragraph (b) of this section is applicable if the program submitted is not adequate. Within 2 months after any revocation pursuant to paragraph (f) of this section, the Administrator shall prescribe a carpool incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52.

(h) All programs approved under paragraph (d) or promulgated under paragraph (g) on account of an initial failure to submit a plan shall be fully implemented on or before September 1, 1974.

(i) Each employer in the Region who maintains more than 70 employee parking spaces shall, on or before April 1, 1975, submit to the Administrator an adequate annual incentive program conforming to the requirements of paragraphs (b) and (e) of this section, except that in paragraph (e) of this section the reference date for reports shall be October 15, 1974, rather than January 1, 1974. Each such program shall be subject to approval or disapproval by the Administrator by June 1, 1975. Each such program, when approved, shall be subject to revocation as provided in paragraph (f) of this section.

(j) By June 1, 1975, the Administrator shall prescribe a carpool incentive program for each employer to which paragraph (i) of this section is applicable if such employer has not submitted a program. By August 1, 1975, the Administrator shall prescribe a carpool incentive program for each employer to which paragraph (i) of this section is applicable if the program submitted is not adequate. Within 2 months after any revocation of any program of any employer pursuant to paragraph (f) of

this section, the Administrator shall prescribe a carpool incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52. All such programs shall be fully implemented on or before September 1, 1975.

§ 52.138 Bus/carpool matching program.

(a) Definitions:

(1) "Metropolitan Phoenix Area" means the area bounded on the south by I-17 and Buckeye Road to the intersection with I-17 on the east by 48th Street, on the north by the Arizona Canal and Glendale Avenue, and on the west by 43rd Avenue.

(2) "Greater Tucson Area" means an area bounded by a line starting at the intersection of Sweetwater Drive and Silverbell Road, thence 6 miles east, thence 1.5 miles south, thence 5.5 miles east, thence 7.5 miles south, thence 4.5 miles west, thence 3 miles south, thence 5 miles west, thence 5 miles north, thence 2 miles west, thence 7 miles north to the point or origin.

(b) This section is applicable within the Metropolitan Phoenix Area and Greater Tucson Area in Phoenix-Tucson Intrastate Air Quality Control Region.

(c) On or before January 1, 1974, the State of Arizona shall submit to the Administrator a compliance schedule for implementing the approved bus/carpool matching program. This compliance schedule shall, at a minimum, provide for implementation of the program in the following phases:

(1) On or before March 1, 1974, bus/carpool matching shall be made available to the following employees:

(i) *Phoenix state capital area.* At least 10,000 employees whose work location is within the area bounded by VanBuren Street on the north, Jefferson Street on the south, Central Avenue on the east, and 19th Avenue on the west.

(ii) *Tucson central business district.* At least 2,000 employees whose work location is within an area bounded

by a circle of 2-mile radius centered at the intersection of Congress Street and Stone Avenue.

(2) On or before September 1, 1974, bus/carpool matching shall be made available to the following employees:

(i) *Metropolitan Phoenix Area.* All employees in businesses having more than 250 employees.

(ii) *Greater Tucson Area.* All employees in businesses having more than 100 employees.

(3) On or before September 1, 1975, bus/carpool matching shall be made available to the following employees.

(i) *Metropolitan Phoenix Area.* All employees in businesses having more than 50 employees.

(ii) *Greater Tucson Area.* All employees in businesses having more than 50 employees.

(d) The compliance schedule shall also include the following:

(1) A method of collecting information that shall include the following as a minimum:

(i) Provisions that each affected employee receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application form for applicant identification of time, origin, and destination.

(iii) Provisions for each applicant to receive a list of names and work phone numbers of all other applicants who have similar origins and destinations and whose work hours most nearly match theirs.

(2) A manual or computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and the semirural region surrounding the Metropolitan Phoenix Area and the Greater Tucson Area and matching applicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service such that the master list of all applicants is retained and available for use by new applicants, applications are currently available, and the master list is periodically updated to remove applicants who have moved from the area.

(4) An agency or agencies responsible for operating, overseeing, and maintaining the bus/carpool matching program.

§ 52.139 Management of parking supply.

(a) Definitions:

(1) "Parking facility" (also called "facility") means a lot, garage, building, or structure, or combination or portion thereof, in or on which motor vehicles are temporarily parked.

(2) "Vehicle trip" means a single movement by a motor vehicle that originates or terminates at a parking facility.

(3) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land, buildings, or structures, or portions thereof, for use as a facility.

(4) "Modification" means any change to a parking facility that increases or may increase the motor vehicle capacity of, or the motor vehicle activity associated with, such parking facility.

(5) "Commence" means to undertake a continuous program of on-site construction or modification.

(b) This regulation is applicable to the following cities within the Phoenix-Tucson Intrastate Air Quality Control Region: Phoenix, Tucson, Scottsdale, Tempe, Mesa, and Glendale.

(c) The requirements of this section are applicable to the following parking facilities in the areas specified in paragraph (b) of this section, the construction or modification of which began after August 15, 1973:

(1) Any new parking facility with parking capacity of 50 or more motor vehicles;

(2) Any parking facility that will be modified to increase parking capacity by 50 or more motor vehicles; and

(3) Any parking facility constructed or modified in

increments which individually are not subject to review under this section, but which, when all such increments occurring since August 15, 1973, are added together, would as a total subject the facility to review under this section.

(d) No person shall commence construction or modification of any facility subject to this section without first obtaining written approval from the Administrator or an agency designated by him; provided, that this paragraph shall not apply to any construction or modification for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(e) No approval to construct or modify a facility shall be granted unless the applicant shows to the satisfaction of the Administrator or agency approved by him that:

(1) The design or operation of the facility will not cause a violation of the control strategy that is part of the applicable implementation plan, and will be consistent with the plan's VMT reduction goals.

(2) The emissions resulting from the design or operation of the facility will not prevent or interfere with the attainment or maintenance of any national ambient air quality standard at any time within 10 years from the date of application.

(f) All applications for approval under this section shall include the following information:

(1) Name and address of the applicant.

(2) Location and description of the parking facility.

(3) A proposed construction schedule.

(4) The normal hours of operation of the facility and the enterprises and activities that it serves.

(5) The total motor vehicle capacity before and after the construction or modification of the facility.

(g) The Administrator may require an application for the construction or modification of between 50 and 249 spaces to include the information required by paragraphs (h) (1) through (7) of this section.

(h) All applications under this section for new parking facilities with parking capacity for 250 or more vehi-

cles, or for any modification which, either individually or together with other modifications since August 15, 1973, will increase capacity by that amount, shall, in addition to that information required by paragraph (f) of this section, include the following information unless the applicant has received a waiver from the provisions of this paragraph from the Administrator or agency approved by the Administrator:

(1) The number of people using or engaging in any enterprises or activities that the facility will serve on a daily basis and a peak hour basis.

(2) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projection shall include data concerning the availability of mass transit from such areas.

(3) An estimate of the average and peak hour vehicle trip generation rates, before and after construction or modification of the facility.

(4) An estimate of the effect of the facility on traffic pattern and flow.

(5) An estimate of the effect of the facility on total VMT for the air quality control region.

(6) An analysis of the effect of the facility on site and regional air quality, including a showing that the facility will be compatible with the applicable implementation plan, and that the facility will not cause any national air quality standard to be exceeded within 10 years from date of application. The Administrator may prescribe a standardized screening technique to be used in analyzing the effect of the facility on ambient air quality.

(7) Additional information, plans, specifications, or documents required by the Administrator.

(i) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in accordance with the design submitted in the application and with applicable rules, regulations, and permit conditions.

(j) Within 30 days after receipt of an application, the Administrator or agency approved by him shall notify the

public, by prominent advertisement in the Region affected, of the receipt of the application and the proposed action on it (whether approval, conditional approval, or denial), and shall invite public comment.

(1) The application, all submitted information, and the terms of the proposed action shall be made available to the public in a readily accessible place within the affected air quality region.

(2) Public comment submitted within 30 days of the date such information is made available shall be considered in making the final decision on the application.

(3) The Administrator or agency approved by him shall take final action (approval, conditional approval, or denial) on an application within 30 days after close of the public comment period.

(k) As an alternative to satisfying the requirements of paragraphs (d) through (j) of this section, any local jurisdiction or authority may submit to the Administrator a comprehensive parking management plan covering, at a minimum, the next 5 years. The plan must be submitted on or before April 1, 1974. By June 1, 1974, the Administrator shall approve such plans if he finds that:

(1) The agency submitting the plan has full and adequate legal authority to enforce compliance with its requirements.

(2) The area over which the agency exercises the authority described in paragraph (k) (1) of this section is a logical unit for air pollution control planning purposes.

(3) The plan sets forth a complete description of where additional construction of parking facilities will be allowed under the plan, and where parking spaces will be eliminated. The plan shall include any procedures for adjustments or variances to existing zoning or building codes that require parking spaces for new facilities that are inconsistent with the plan. The plan must state in detail the reasons for expecting any anticipated reduction in parking spaces, and must provide that no parking facility may legally be constructed in the area subject to the plan unless such construction is specifically authorized by the plan.

(4) The plan demonstrates that if its terms are carried out, air quality will improve at least as much as if all new parking facilities were subject to the requirements of paragraph (d) through (j) of this section. If any increase in VMT would result under the proposed plan over and above the VMT figure that would result if the review system outlined in paragraphs (d) through (j) of this section were followed, the plan shall show by clear and convincing evidence that any resulting impact on air quality will be insubstantial.

(5) The plan has been adopted after a public hearing held in [sic] conformity with the requirements of § 51.4 of this chapter.

(l) In any area covered by a parking management plan approved under paragraph (k) of this section, no action to expand the number of spaces at parking facilities may be taken that is not explicitly provided for in the plan without a permit issued in accordance with the requirements of paragraphs (d) through (j) of this section.

§ 52.140 Monitoring transportation trends.

(a) This section is applicable to the State of Arizona.

(b) In order to assure the effectiveness of the inspection and maintenance program and the retrofit devices required under the Arizona implementation plan, the State shall monitor the actual per-vehicle emissions reductions occurring as a result of such measures. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period January 1 to March 31, 1976.

(c) In order to assure the effective implementation of §§ 52.137, 52.138, and 52.139, the State shall monitor vehicle miles traveled and average vehicle speeds for each area in which such sections are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State of Arizona in accordance with § 51.7 of this chapter. The first quar-

terly report shall cover the period from July 1 to September 30, 1974. The vehicle miles traveled and vehicle speed data shall be collected on a monthly basis and submitted in a format similar to Table 1.

TABLE 1

Time period
Affected area

Roadway type	VMT or Average Vehicle Speed	
	Vehicle type (1)	Vehicle type (2)[1]
Freeway		
Arterial		
Collector		
Local		

[1] Continue with other vehicle types as appropriate.

(d) No later than March 1, 1974, the State shall submit to the Administrator a compliance schedule to implement this section. The program description shall include the following:

(1) The agency or agencies responsible for conducting, overseeing, and maintaining the monitoring program.
(2) The administrative procedures to be used.
(3) A description of the methods to be used to collect the emission data, VMT data, and vehicle speed data; a description of the geographical area to which the data apply; identification of the location at which the data will be collected; and the time periods during which the data will be collected.

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

National Capital Region Transportation Control Plans

This notice of final rulemaking amends the implementation plans of the District of Columbia, Maryland, and Virginia, so as to provide a single unified transportation control plan for the National Capital Interstate Air Quality Control Region (the "Region"). A General Preamble was published on November 6, 1973 (38 FR 30626), and is incorporated by reference.

BACKGROUND

On March 20, 1973, by publication in the FEDERAL REGISTER (38 FR 7325, and 7327), the Administrator, acting in response to a court order, notified the District of Columbia and the Governor of Maryland that transportation control plans should be submitted by April 15, 1973, for the portions of the Region under their respective jurisdictions. In response, plans were submitted on April 20, 1973, by the District and on April 16 and May 5, 1973, by Maryland. Although Virginia was not notified at that time, it too submitted transportation control plans to the Administrator on April 11 and May 30, 1973. These three plans had been worked out in coordination with each other under the auspices of the National Capital Interstate Air Quality Planning Committee, a council of local and State governments.

The strategies proposed, such as improved mass transit, parking disincentives, emission inspection programs, and additional stationary source controls represented the combined efforts of the three jurisdictions to develop a unified

plan which would apply area-wide. They comprised a wide range of concepts which, if implemented properly, should effectively control the automobile-related emission problems in the area. The strategies as proposed by each of the jurisdictions were for the most part acceptable. However, since none of the plans could be completely approved. [sic] On June 15, 1973, the Administrator issued approval/disapproval notices containing his evaluation of each of the plans on June 22, 1973 (38 FR 16550).

The jurisdictions responded in a timely fashion to cure some of the deficiencies in the original submissions. Thus, material to supplement the plans was provided by the District of Columbia on July 9 and July 16; by Maryland on June 15, June 22, June 28, and July 10; and by Virginia on July 9, 1973. Public comment on each of these additional submissions was invited by FEDERAL REGISTER notice published July 18, 1973 (38 FR 19132).

On August 2, 1973, the Administrator published a proposed transportation control plan for each of the three portions of the Region (38 FR 20758, 20779, 20789). The proposals were very largely based on the material submitted by the three local jurisdictions. Public hearings on these EPA proposals were held in Virginia on September 4, in the District of Columbia on September 5, and in Maryland on September 6, 1973. The submissions by Virginia, Maryland, and the District were also extensively discussed at the public hearings.

Large portions of the submissions made in June and July by the three local jurisdictions are being approved today. In addition, the measures which EPA is promulgating have, to the maximum extent possible, been drafted to reflect the expressed preferences of the District of Columbia Government and the State of Maryland and the Commonwealth of Virginia.

AIR POLLUTION IN THE NATIONAL CAPITAL INTERSTATE AQCR

The Region is made up of Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and the District of Columbia. It extends past Dulles Airport in the west, to Gaithersburg and the National Bureau of Standards in the North along Route 70-S, past Quantico, Virginia, south along the Potomac River, and to Beltsville, Maryland, in the east.

1. Natural Features. The National Capital Interstate Region is situated almost entirely in the gentle rolling Piedmont Plateau and the nearly flat Atlantic Coastal Plain. The terrain to the east is generally flat, with elevations less than 1,000 feet above sea level. Gentle rolling hills with elevations of 200 to 500 feet extend to the Blue Ridge Mountains at the western edge of the Region. In general, the topography permits free air movement with few channeling effects.

Surface winds as reported by the National Airport occur most frequently from the northwest during the colder months and from the south and south-southeast during the warmer months. Weather changes occur frequently, but periods of stagnating anticyclones, which contribute to the development of high pollutant concentrations, are not uncommon. During the 30-year period from 1936 to 1965, the area was affected by 48 stagnating anticyclones for a total of 231 days. Average duration of each anticyclone was 4.8 days; and in three of the cases, stagnation conditions persisted for seven days or more. Of the 48 cases, 34 occurred during the months of August, September, and October. Frequency of inversions was greatest at 7 a.m., varying from 48 percent in the winter to 59 percent in the fall. Mean maximum mixing heights varied from 480 meters in December to 1,310 meters in June.

2. Air Quality and Reductions. Continuous monitoring of carbon monoxide (CO) levels is provided by 11 stations in the Region, with 8 stations providing continuous monitoring of photochemical oxidants. The highest 1972 CO reading of 20 parts per million (ppm) (compared to the national standard of 9 ppm) was recorded at the CAMP station in the District of Columbia. Oxidant readings of 0.20 ppm, compared to the national standard of 0.08 ppm, were recorded at the Argyle Sligo Airmon 5 station in

Silver Spring, Maryland, and at the Airmon 4 station in Hyattsville, Maryland. The Air Quality Planning Committee, after review of air quality data throughout the Region, recommended these values be uniformly used as a basis for development of the Region's strategies by the District of Columbia, Virginia, and Maryland.

Emission reductions of 55.5 percent for CO using the rollback technique and 67 percent for hydrocarbons (based on the conversion curve in Appendix J of 40 CFR 51) were determined by the jurisdictions as necessary to meet the national ambient air quality standards. Since significantly greater emission reductions are required for HC, the control measures proposed to attain the oxidant standard will be more than sufficient to attain the CO standard. For a further discussion, see the Technical Support Document for the National Capital Transportation Control Plan, October 1973 (hereafter referred to as the Technical Support Document), which is available for public inspection at the EPA Region III Air Programs Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, and at the Freedom of Information Center, EPA, Room W232, 401 M Street S.W., Washington, D.C. 20460.

Oxidant readings for this past summer, not yet officially reported to or verified by EPA, will very possibly be equal to or higher than the maximum readings obtained to date. If this proves to be the case, a plan revision calling for additional reduction measures will be required.

Since 1972 was the year in which the high readings for HC and CO were taken, emissions for that year have been calculated in order to determine the total degree of control required.

Emissions of hydrocarbons vary considerably during the day, and the rush hours account for a major amount of emissions due to the contribution of motor vehicles. Hence, the HC emission inventories and strategy effects were determined for this peak period, 6-9 a.m., although most of the strategies approved or promulgated today will reduce emissions throughout the day.

The local Air Quality Planning Committee's conclusion is that emissions of hydrocarbons in the Region between

6 a.m. and 9 a.m. during 1972 amounted to 63.3 tons. Emissions of carbon monoxide in the eight-hour period from 6 a.m. to 2 p.m. during that same year amounted to 1133 tons.

The National Capital Transportation Control Plan

1. Background and origin. The transportation control measures contained in this plan are based as much as possible on measures suggested by the three affected local jurisdictions. In particular, no measures to reduce vehicle miles traveled (VMT) are included which did not originate from suggestions made by the States or by the District of Columbia, except for the requirement to review the construction of certain parking facilities.

The submissions from each of the three local jurisdictions (including the supplemental submissions) call for annual emission testing of all light duty vehicles, establishment of a computer car pool matching system, and the substantial expansion of bus service. The latter will occur through the expansion of the existing fleet size, establishment of an extensive network of exclusive bus lanes, and the addition of new routes, together with such amenities as shelters and more fringe parking lots. In addition, all employers and all commercial lots in areas served by mass transit will be required to charge commuters by automobile the prevailing commercial rate plus a two dollar per day Mass Transit Incentive, and on-street parking by commuters in these same areas will be restricted. Increased controls on stationary sources of hydrocarbon emissions were also called for. In addition, the District originally proposed and Virginia took credit for a ban on deliveries by gasoline-powered trucks during about half the daylight hours. Finally, the plans assumed that EPA-imposed restrictions on ground operations of aircraft at Dulles and National airports would lead to a further emission reduction. For a further discussion of the three state submissions, see the Evaluation Reports prepared by EPA for each of them. These are available for inspection at the addresses listed above for the Technical Support Document.

The EPA proposals published in the FEDERAL REGISTER on August 2, 1973, discussed these state measures, and in certain instances language was proposed to give the state strategies the necessary regulatory form. The Clean Air Act, however, requires that before an extension may be granted to a Region its plans must apply all measures to reduce emissions which are "reasonably available." These included the retrofit of 1971-74 fleet vehicles with oxidizing catalysts, and the retrofit of older vehicles with a relatively inexpensive emission control device known as VSAD (Vacuum Spark Advance Disconnect). As contingency measures, the preconstruction review of all new parking lots to determine their impact on air quality and a reduction in off-street parking spaces were proposed for implementation only if the Mass Transit Incentive was not enacted. Where necessary, additional measures for the control of emissions from stationary sources were also proposed to cure minor technical deficiencies in the local plans.

2. Summary of public comments. Three days of public hearings were held on the proposed plans for the National Capital Interstate Region. In all seventy-nine persons and organizations gave testimony. In addition, numerous written comments were received from private citizens, citizen groups, environmental organizations, trade associations, private industry, and governmental entities.

HEAVY DUTY VEHICLE RESTRAINTS

Criticism of the proposed ban on heavy duty gasoline powered trucks during the morning rush hours was especially pointed. It was argued that the emission reduction that would be achieved by imposition of the ban did not justify the extensive social and economic disruption that would result and that disruption to the construction schedule of the METRO system might result if the ban were imposed. Numerous practical difficulties were raised by the affected industries which would require an unwieldy exemption list and render enforcement very difficult. The testimony favored the substitu-

tion of heavy duty retrofit in place of an outright ban on heavy duty vehicle during rush hour periods. EPA agrees that in the D.C. area, which is heavily serviced oriented, a ban on heavy duty vehicles would, of necessity lead to many legitimate exemptions. Therefore, EPA has decided that a retrofit strategy would be more appropriate and would assure that emission reductions needed for this category of vehicles would be attained.

MASS TRANSIT INCENTIVE SURCHARGE

Comments concerning approval of the proposed two-dollar Mass Transit Incentive Surcharge on all day parking were mixed, but the majority were in opposition. Opposition from downtown businessmen was vigorous. Concern was expressed that the incentive would penalize central business district (CBD) businesses, would further hamper an already struggling downtown area, and would contribute heavily to relocation of businesses to suburban areas. However, much of the criticism appears to be based on the misimpression that the Mass Transit Incentive Surcharge would be levied only in the District of Columbia, that it would be imposed on shoppers, and that it would be imposed before adequate mass transit was available. In fact, the incentive will be applied only to long-term commuter parking (not shoppers), will be applied uniformly among the jurisdictions and will not be applied until adequate mass transit is available.

Also there were claims that the surcharge was a "commuter-tax." However, it is not the purpose or effect of this measure to raise revenue for one jurisdiction at the expense of others. The surcharge will apply to all commuters to areas adequately served by mass transit, wherever they come from, and will be applied not only in certain areas of the District, but in a significant number of employment centers outside it. All revenues from the surcharge will be used to expand mass transit, which will be to the benefit of the Region as a whole.

Comments in the Maryland hearing asserted that the outer suburbs would be unfairly burdened by the Mass Transit Incentive Surcharge because there are few, if

any, mass transit lines in existence or proposed that run to these areas. However, only those areas adequately served by mass transit will be affected, and in addition those in outer suburbs can greately mitigate any adverse impact either by car pooling or park and ride facilities.

Despite the objections raised, EPA agrees with the three lead jurisdictions that strong negative disincentives as well as positive incentives are necessary to divert automobile drivers to mass transit. In fact, this is the premise on which the entire transportation portion of the plans submitted by the jurisdictions is based upon.

Several comments were received suggesting that the revenues obtained from the incentive should be spent on improvements of mass transit. This is consistent with the plans for use of the revenues.

It was also suggested that mass transit improvements could be facilitated by an immediate phase-in of the Mass Transit Incentive Surcharge applied throughout the entire AQCR. This alternate proposal would impose an immediate phase-in of a smaller charge which would be applied to all parking facilities area-wide without regard to mass transit service. The proceeds from the charge would be used to purchase and subsidize mass transit. The charge would increase in amount as mass transit becomes more readily available. EPA feels the phased-in approach has merit.

Finally, most of the written comments submitted by the local business community included pleas that the community should be free to propose and enact an alternative program. However, none of the comments offered suggestions other than to increase use of carpools, a program which was part of the proposed plan. EPA encourages the communities affected to establish programs which would achieve similar or greater emission reductions than the programs being approved today. If such programs in proper regulatory form and of adequate stringency are submitted to EPA, they will be approved and the corresponding portions of EPA's plan will be descinded.

The Environmental Protection Agency also found merit in the suggestions that handicapped persons should be

exempt from the incentive, and EPA has incorporated these suggestions in this promulgation.

Parking Restrictions

Three types of parking restrictions were discussed in the comments received by EPA: the on-street parking restrictions, the off-street space reduction contingency regulation proposed by EPA, and parking in Federal facilities.

As to on-street parking, several citizen groups in the District of Columbia emphasized that parking restriction provision proposed by the local jurisdictions are essential to the effectiveness of the Plan, but that the proposed provisions lacked sufficient detail. There were comments that on-street parking should be prohibited from heavily traveled arterials, and that a permit system for residents should be included. In fact, the plan proposed by the District of Columbia which is being approved in this action includes provisions similar to those advocated in the public comments.

With respect to the EPA proposal to reduce available off-street parking spaces as an alternative strategy businesses were opposed to any restrictions of available parking on company property. The State of Maryland commented that they had no authority to require local jurisdictions to reduce the number of parking spaces. The parking management groups questioned EPA's authority to impose parking restrictions. In both cases, EPA believes its legal authority adequately supports the proposed contingency measure. However, other groups feared that commuters would utilize all available spaces, leaving few spaces for shoppers, if the proposal were implemented. Partly due to this last point, and since subsequent studies have shown that a much greater space reduction than proposed in the areas affected would be necessary to achieve results similar to the surcharge, EPA has dropped the contingency proposal for parking space reduction.

Several comments suggested that increasing the fine for parking violations and enforcing the existing restric-

tions on on-street parking more strictly would also aid any on-street parking reduction plan. EPA encourages the local jurisdictions to continue to study these recommendations.

Much public testimony was received concerning the issue of Federal parking. The comments were nearly unanimous that in order for any parking strategy to be effective, the full cooperation of the D.C. area's largest single employer, the Federal Government, would be necessary. Many persons suggested that if controls were not placed on Federal employee parking, private sector personnel could not be expected to submit to regulation. The Federal Government agrees, and recognizes its responsibilities to the National Capital area. Such controls were contained in the EPA proposal, and are now being promulgated.

Several comments suggested that night employees be exempted from parking restrictions for safety and other reasons. Since the plan is designed to control emissions during daylight hours because of the nature of smog formation, control over these personnel is not necessary for air quality purposes, and EPA has made provisions in this promulgation for such an exemption.

Mass Transit

Numerous comments were received on how mass transit could be improved. Comments suggested fringe parking systems, improved routing, bus lanes, dial-a-ride buses, limited stop buses, reduction in fares, and staggered working hours. The Washington Metropolitan Area Transit Authority (WMATA) has expressed willingness to work closely with EPA in considering each of these measures. As discussed elsewhere in this preamble, WMATA is committed to expanding its bus fleet as quickly as possible and to initiating new service lines. Exclusive bus lanes were proposed by the local jurisdictions, and are being approved in this promulgation.

WMATA has singled out staggered working hours as being an effective aid to more efficient use of mass transit.

EPA and GSA are currently studying the feasibility of staggered working hours and four day work weeks for Federal employees.

There was universal support for the proposed computerized car pool matching system. The Metropolitan Washington Board of Trade, with the assistance of the Council of Government, has independently initiated a program to promote car pools among private industry. The Board is currently holding a series of workshops with employers explaining car pool techniques, has made available information, experts, and computer time to assist in establishing car pool programs.

Commuter Rail

Numerous citizen groups pointed to the desirability of a commuter rail system for the D.C. area. EPA recognizes that commuter rail systems are quite functional in other metropolitan areas and that a rail system could be an attractive transportation alternative. However, implementation of such a system area wide is fraught with practical difficulties, not the least of which is the fact that the area is fully committed to heavily subsidizing the METRO rapid rail system. None of the three jurisdictions considered commuter rail in their plans, and EPA has not had sufficient time before this promulgation to adequately study the feasibility for commuter rail for the D.C. area. Thus, no provision is made for commuter rail in this promulgation. Nevertheless, EPA will continue to support all feasible transportation alternatives and encourages the three jurisdictions to study and promote the development of a commuter rail system in addition to METRO.

Retrofit Proposals

Comments received on the VSAD retrofit for pre-1968 light duty vehicles and the catalytic retrofit for 1971-74 fleet vehicles centered around the availability of technology and the economic justification of the retrofits in

light of the relatively small reduction in emissions that would be achieved area wide. However, the reductions for each vehicle retrofitted are substantial. EPA has discussed these comments in the General Preamble to the Transportation Control Plans in the November 6, 1973, FEDERAL REGISTER (38 FR 30631).

The State of Maryland objected to imposition of retrofits on used fleet vehicles because EPA has granted new vehicles a one year delay of the effective date of the emission standards. Since the regulation would not become effective until May 31, 1977, EPA does not believe imposition of the regulation will be in fact inequitable.

Testimony from classic and antique car collectors indicated that such cars are well maintained and rarely used, and that imposition of retrofit devices would reduce their historic value. These regulations now provide for exemption from retrofit and inspection requirements for classic and antique vehicles.

Maryland also stated that VSAD retrofit does not reduce emissions as claimed and that the retrofit could cause engine damage. Based on the results of tests and on the California experience it is the EPA's position that this is not the case for the model years covered in these regulations, and therefore, EPA is promulgating a retrofit strategy. However, the regulation allows the jurisdictions to require installation of any alternative device which achieves reductions equivalent to VSAD.

DRY CLEANING VAPOR CONTROLS

Considerable confusion was evidenced by the public comments concerning control of hydrocarbon vapors from dry cleaning processes. It was EPA's intention to propose the equivalent of Los Angeles' Rule 66, a well-established procedure. Comments from the industry indicated preference for the Rule 66 approach rather than the proposed regulation. The proposed regulation has been modified to conform to these suggestions.

BICYCLE ROUTES

Comments from area bicyclists emphasized three major topics. First, a strategy encouraging the use of bicycles as a mode of commuter travel should be adopted. Second, any system to encourage bicycle usage must protect bicyclists from automobiles. Third, bicycles should be safe from theft while parked. The local jurisdictions appeared willing to implement a network of bicycle routes. Based on the comments received, EPA is promulgating a regulation which will institute a network of commuter bikeways, thereby offering commuters another alternative mode of transit. The regulation will also assure safe parking for bicycles.

LAND USE MEASURES

Written and oral comments urged EPA to become more involved in land use in the D.C. area. EPA believes that changes in land use patterns are the most effective ways of controlling air pollution, and that no lasting solution of the pollution problem is possible without them. In the short run, such measures can contribute to VMT reduction by making growth of automobile traffic more difficult. For this reason, and as a start toward the long-term changes in land use that will be necessary, a measure providing for the pre-construction review of parking lots has been included in this plan. Further review of major new construction projects will be provided by "indirect source" regulations which EPA is under a court order to promulgate by December 15, 1973. These regulations were proposed October 30, 1973 (38 FR 29893).

INSPECTION/MAINTENANCE

Unanimous support for inspection/maintenance programs confirmed the feasibilty and acceptability of these proposed measures.

THE CONTENT OF THE PLAN

1. General. The measures approved and promulgated today may be divided into six categories, corresponding to the order in which the jurisdictions and in some cases, EPA decided to apply them.

(1) The Federal Motor Vehicle Control Program for new vehicles, which accounts for much of the emission reduction achieve. [sic]

(2) Additional controls on statutory source emissions. Both the State and EPA have extensive experience with such measures, and it can be predicted with confidence that none of them will cause significant economic or social disruption, even though some burdens on individual businesses may result.

(3) The establishment of a system for the annual emissions testing of automobiles and medium-duty vehicles, with provisions for the necessary corrective maintenance to be performed on those which fail. This is a measure that can easily be incorporated into a present annual safety inspection. Inspection/Maintenance programs are being adopted in virtually all transportation control plans.

(4) Moderate VMT reduction measures, resulting from such steps as the establishment of bus and bicycle lanes on existing road space, the review of new parking lots, and measures to encourage car pooling and to discourage commuter travel by automobile. These measures not only contribute directly to cleaning the air, but they also encourage more effective land use, the revival of urban centers, and reduced energy consumption. They are essential to the long-term maintenance of air quality standards.

(5) The reductions achievable from control of aircraft operations at Dulles and National Airports.

(6) EPA looked to the reductions that could be achieved by installing (or "retrofitting") emission control devices on existing vehicles. The more expensive of these devices —catalytic converters—are being reserved for fleet vehicles and trucks, which are generally owned by those

who can better afford the expense. The one retrofit of pre-1968 vehicles that is being promulgated is relatively inexpensive and achieves large emission reductions when compared to its cost. In addition, to ensure that emission reductions from heavy-duty gasoline powered vehicles are achieved, a regulation is being promulgated which established [sic] a heavy-duty retrofit program.

2. The specific measures. The specific measures contained in this plan, listed in the order indicated by the preceding discussion, are as follows:

Vapor Recovery from Gasoline Loading and Sales. At the present the system by which gasoline is first loaded into the storage tanks at the filling stations and then loaded into individual vehicles gives rise to very significant evaporative emissions of hydrocarbons at the points of transfer. The regulations being promulgated call for at least 90 percent recovery of vapors displaced under [sic] underground storage tanks are refilled and 90 percent recovery of vapors displaced when vehicular tanks are refilled. All three jurisdictions proposed to control such emissions as part of their transportation control plans. However, the necessary regulations have not yet been adopted. Accordingly, the Administrator is promulgating regulations for all three portions of the Region to give effect to the local strategies. When equivalent local regulations are adopted and submitted, EPA will rescind the regulations promulgated today. The adopted local regulations submitted may be in a form different from the regulations promulgated today, so long as equivalent emission reductions are achieved.

Use of Solvents in Dry Cleaning. Several of the solvents used at present in dry cleaning of clothes contribute to the formation of photochemical oxidants when they evaporate. These emissions can be controlled either by the use of nonreactive solvents or by appropriate measures to control evaporative emissions. The regulations being promulgated is in a form which corresponds to the controls imposed by Los Angeles County Rule 66. It provides for at least 85 percent control of emissions from these facilities. All three jurisdictions included a meas-

ure to control such emissions in their plans, and the EPA regulation promulgated today will give this strategy the required regulatory form. When equivalent local regulations are adopted and submitted, EPA will rescind the regulations promulgated today. It should be noted that the adopted regulations submitted may be in a form different from the regulations promulgated today, so long as equivalent emission reductions are achieved.

Inspection and Maintenance of Light and Medium Duty Vehicles. All three jurisdictions proposed the annual emission testing of light duty vehicles (those weighing under 6,000 pounds). The District of Columbia and Maryland systems will require all vehicles to be tested annually by "loaded" (dynamometer) test—the most effective form of inspection—and would require annual inspection for commercial vehicles. The Maryland plan did not set forth the program in much detail. The Virginia plan contains an "idle" test program.

The Administrator is approving in full the District of Columbia and Virginia programs for inspection and maintenance, and is promulgating a regulation designed to establish a similar program in the Maryland portion of the Region.

In addition, the Administrator has determined that medium duty vehicles (6,000-10,000 pounds gross weight) use engines similar to those used in light duty vehicles and can accordingly be inspected under the same program. Regulations are, therefore, being promulgated to subject such vehicles to inspection in all three parts of the Region.

Aircraft Ground Operations Control. Each of the three local plans claimed hydrocarbon emission reductions of 50 percent resulting from modifications of aircraft ground operating procedures. EPA is granting partial credit for this strategy based upon the assumption that operating standards will be effective by 1977. EPA calculations indicate that hydrocarbon reductions of 36 and 31 percent are achievable at National Airport and Dulles Airport respectively, using presently feasible ground control measures. The period during which ground operating procedures to reduce emissions can be employed is a function of aircraft taxi time and the length of delays prior to departure. These times are less at Dulles and National airports than at most other major airports. Thus, a 50 percent reduction, while perhaps achievable at airports which have long delays and long taxi times, is not possible for the two local airports. In addition, since four engine commercial aircraft do not operate out of National Airport, credit cannot be taken at that airport for the large emission reductions which would result from a shutdown of two of the engines during delays and taxi-in periods. The EPA study from which the 50 percent emission reduction figure was derived assumed the use of some operating procedures that are no longer considered feasible because of either safety or practical reasons.

The present projected emission reductions for Dulles and National Airports result from procedures which do not involve any sacrifice in safety. Comments received at public hearings indicate that these procedures are feasible and, in fact, are already in use by some airlines on a pilot-option basis. Presently, an EPA/FAA demonstration project is being conducted to determine the validity of calculated emission reductions. If the results show that reasonable and safe ground operating procedures do reduce emission levels, the Administrator will propose regulations for the implementation of each procedure.

Expansion of Bus Lanes. The conversion of road space to the exclusive use of buses or car pools is an essential VMT reduction measure. By reducing the amount of road space available to automobiles, driving tends to be discouraged, while such lanes will make more efficient mass transit possible to satisfy the displaced travel demand. Each of the three jurisdictions in the Region submitted a list of corridors it proposed to convert to the exclusive use of buses. The Administrator is approving these locations and is promulgating supplementary requirements to ensure that such lanes are set aside on schedule.

Under the local strategies approved today, two exclusive bus lanes—one inbound lane during the morning

peak period, and one outbound lane during the evening peak period—would be established along the following corridors:

a. U.S. Route 50 from New Carrollton, Maryland to the Washington CBD.

b. Pennsylvania Avenue and Maryland Route 4 from Andrews Air Force Base to the CBD.

c. South Capital Street from Bolling Air Force Base to Independence Avenue.

d. George Washington Parkway—Washington Street —Jefferson Davis Highway from Fort Hunt to National Airport.

e. U.S. Route 50 from Seven Corners to the CBD.

f. Dulles Access Road—Virginia 123—George Washington Memorial Parkway from the Reston Interchange to the CBD.

g. Georgia Avenue—13th Street from the Maryland boundary to the CBD.

h. U.S. Route 240 from Old Georgetown Road to Sheridan Circle.

i. New Hampshire Avenue from U.S. Route 29 to Grant Circle.

The addition of bus lanes in these corridors will complement the existing system of bus lanes and will help assure that an extensive network will be implemented.

Expansion of Bus Transit System. An essential element of any transportation control plan for the National Capital Area is improved mass transit. Accordingly, each of the three plans proposed the area wide addition of 750 buses to the existing fleet. It will be necessary to expand the existing bus fleet to transport those commuters who no longer intend to use the automobile to drive to work. The Washington Metropolitan Area Transit Authority (WMATA) has already instituted a five-year program that was to effect a modest increase in fleet size and a retirement of the oldest buses in the current fleet. WMATA now plans to modify their original program to allow a more rapid increase in fleet size to meet this need. The increase will be gained by retaining some of the older, but serviceable buses (e.g., air-conditioned, good working order) that had been programed for retirement. When the Metro Rapid Rail System comes into

operation, the new buses will also be used to provide the cross-town or suburb-to-suburb service that Metro will not provide, and to provide feeder routes to Metro stations.

The following chart shows WMATA's current anticipated timetable for increasing the fleet size through 1977, and a modified timetable which could be implemented to increase fleet size to meet the needs of the transportation plans. In addition, the 369 buses currently planned for retirement by June, 1974, could be retained to augment further the fleet size should it become necessary.

Date	New buses delivered	5-year plan retirement	Modified plan retirement	Annual net increase	Fleet size
1973					1,779
June, 1974	620	508	369	251	2,030
December, 1974	175	150	0	175	2,205
December, 1975	175	150	0	175	2,380
1977	150	150	0	150	2,530
				751	

Of the 251 net increase in buses for 1974, approximately 100 buses will be used to augment existing service lines, and the remaining (approximately 150) buses will be deployed on new lines, including cross-city and cross-county routes.

In addition to an increase in the size of bus fleets, WMATA is also committed to encouraging bus ridership. Additional phone lines have been installed, and a computerized phone route service is scheduled for completion by June, 1974. New maps are in final printing. EPA encourages WMATA to make schedules and maps as widely available as possible, for example in shopping areas, government buildings, and major employment centers.

This promulgation contains a compliance schedule which is primarily intended to insure that the necessary commitments for funding will be forthcoming from the affected jurisdictions in a timely manner.

Elimination of Free Commuter Parking and Mass Transit Incentive. Commuter travel, since it repeats it-

self predictably from day to day, is the segment of daily travel most easily shifted to car pools or other forms of mass transit.

One way to provide an adequate incentive for employees to switch to mass transit commuting is by an increase in the parking charge over and above the current rate to encourage use of mass transit by commuters. This incentive could promote use of mass transit still more if the revenues from it were channelled back to the mass transit system. The National Capital plan includes such a provision.

The plans submitted by the three jurisdictions and supporting documents suggested that employers in areas adequately served by mass transit should eliminate free parking for their employees, and also impose an additional two dollar per day surcharge that would be used to subsidize mass transit. The plans suggested that EPA should take action to impose such a rate on the Federal Government, and that the three jurisdictions would then impose it on private employers and on commercial lots.

Accordingly, EPA is today promulgating regulations that would impose on the Federal establishments commercial-type charges plus the Mass Transit Incentive Surcharge that the local jurisdictions have requested thereby eliminating free parking for Federal employees as suggested in the local plans. The surcharge and the commercial rate requirements are part of the same package; neither will be imposed apart from the other. These strategies will take effect in 1975 and have been worked out with the cooperation of the General Services Administration. They will apply to all agencies of the executive, legislative, and judicial branches of government. The Administrator is also approving the commitments of the three local jurisdictions to impose the same obligations on private employers and on commercial parking lots, and is promulgating enforceable compliance schedules to make sure that this is done.

Defining the areas where the commercial rates and surcharges will apply has been a difficult task. The general approach taken by EPA is consistent with the re-

gional strategy of applying the parking measures only in employment areas which are adequately served by mass transit at present, or which are capable of being adequately served by mass transit by mid-1975. The areas listed below are those which, in the best judgment of EPA, meet this test.

District of Columbia Central Business District
Federal Triangle Area
Capitol Hill Area
Southwest Mall—Waterside Mall Area
Friendship Heights Area
Prince Georges Plaza Area
Downtown Silver Spring Area
National Institute of Health Corridor Area
Rosslyn Area
Crystal City Area
Pentagon
Tyson's Corner Area
Downtown Alexandria.

The concept of areas adequately served by mass transit can be approached in several ways. In order to permit the local jurisdictions as much latitude as possible in the plan, the Administrator will allow each jurisdiction to delete or add areas, provided that an affirmative showing is made to the Administrator that such changes are appropriate and that no other areas are capable of being considered adequately served. Any such substitution or affirmative showing shall be submitted no later than June 30, 1974. By June 30, 1974, each jurisdiction will be required to submit exact definitions or boundaries of the areas included on the above list or the alternate areas selected. The three jurisdictions must conduct a coordinated study of the entire Region defining precisely the areas covered. The list of areas must be updated at least once per year beginning June 30, 1975. Additional areas must be included as mass transit service is increased, unless the jurisdiction can affirmatively demonstrate that it is impossible for any additional areas to be included.

It must be emphasized that the commercial rates and Mass Transit Incentive will not go into effect until mass transit has been significantly expanded by the transit improvement measures outlined above. Therefore, it is expected that these measures will become effective on or about June 30, 1975. However, if the bus system expansion does not proceed substantially as planned, the Administrator may adjust the effective date of the measures to coincide with mass transit development. In fact, the Mass Transit Incentive Surcharge approved in this final promulgation embodies this concept by proceeding on a phased implementation schedule. The original proposals by the jurisdictions included a strategy for the imposition of a $2.00 per day surcharge on commuter parking beginning in 1975. In order to be assured that mass transit will be available to provide the alternate mode of travel for commuters displaced by the surcharge and to allow commuters time to adopt other transit modes, EPA has modified the schedule for imposition of the Mass Transit Incentive Surcharge to proceed on a phased implementation schedule.

The new schedule has been based on WMATA's most recent anticipated timetable for growth of its fleet. The Mass Transit Incentive Surcharge would initially be set at $0.50 per day and would increase up to $2.00 per day on the following schedule:

Effective date:	*Mass transit incentive surcharge (per day per space)*
June 30, 1975	$0.50
Jan. 1, 1976	1.00
June 30, 1976	1.50
Jan. 1, 1977	2.00

Any net revenues collected from the Mass Transit Incentive Surcharge on commercial, governmental and private parking facilities will be used for the further expansion or operation of the mass transit system.

The commercial rates and surcharge will be imposed only on those who park for six (6) or more hours at a time. It should accordingly have little or no adverse effect on short term parking by shoppers and on the economic health of existing business districts such as downtown Washington, but should instead operate almost exclusively to change commuting habits.

One other topic deserves discussion under this section. This is the off-street parking space reduction which was proposed as a contingency to the surcharge. Testimony received asserted that if spaces were reduced commuters would take up all available spaces leaving few, if any, for shoppers. Therefore, this strategy would have little effect on commuter trips while shoppers would be adversely affected. Also studies conducted by Pratt and Associates for COG and EPA have indicated that, in order to achieve VMT reduction similar to that expected by the imposition of the surcharge, a parking space reduction much larger than the 10-15 percent proposed would be necessary.

Finally, these strategies provide exemption for handicapped persons.

On-Street Parking Restrictions. To make the parking regulation strategies described above complete, each of the three local jurisdictions submitted measures to EPA that would bar on-street parking by commuters in the areas where the surcharge is in effect. In addition, the District of Columbia proposed to restrict on-street parking on major arterial streets and proposed to institute a permit system so that available on-street spaces would be used by residents of the neighborhood rather than by commuters. These measures are being approved by the Administrator subject, in the cases of Virginia and the District of Columbia, to compliance schedules to correct technical deficiencies in the strategy.

Computerized Car Pooling. The strategies described above can be expected to cause a considerable shift to car pool commuting among employees. Individual automobiles, which are designed to carry four to six persons and which currently carry an average of approximately

1.4 persons per trip in the Region, represent the largest pool of unused transit capacity available. Car pooling, properly administered, could result in a great VMT reduction.

Each of the three local jurisdictions suggested the establishment of a computer-aided car pool matching system to assist and encourage the shift to car pools. This portion of the District of Columbia, Maryland and Virginia plans is being approved in full.

Bicycle Lanes. As a result of comments received at the public hearings, the Administrator is including regulations establishing a bicycle lane-bicycle rack strategy. A safe and widespread system to encourage bicycle usage by present users of motor vehicles has the potential of decreasing area wide VMT by about one percent. Reduction in this range can be achieved by diverting 12-25 percent of urban work trips of less than 4 miles to bicycle commuting from auto commuting. This estimate takes no account of the potential for also shifting other categories of trips under four miles (such as recreational or shopping trips) to bicycles. To accomplish this result the regulation requires the jurisdictions to establish a bicycle lane network of no less than 180 miles area wide by July 1, 1976. Such a network should provide feeder routes to Metro and railroad stations, and should link all major residential sections of the city with centers of employment, as well as major educational institutions and commercial centers.

The bicycle lane network will be implemented following a comprehensive study of all aspects of present and potential bicycle usage. The study will determine the best locations for bicycle routes, both on-street and off-street, and will examine the costs of the bicycle land and rack network.

A pilot bicycle route from Key Bridge past the White House and the U.S. Capitol to Pennsylvania Avenue and Alabama Avenue, S.E. will be established prior to April 1, 1974. An evaluation of this route shall be included in the comprehensive study. This route was chosen because it provides direct access to the Central Business District

from areas of the city where present bicycle use is high, and because it will enable connection with Virginia routes.

A system of bicycle racks will be required by June 1, 1975. Bicycle racks or other safe storage facilities are an essential part of a bicycle plan. Without them, the threat of theft may deter potential riders from using even the most extensive bicycle lane network. The regulations require that any employer, building, or facility providing motor vehicle parking space must also provide bicycle parking in an equitable ratio: 1 bicycle parking space capable of storing 12 bicycles in a rack for every 75 motor vehicle parking spaces. Racks should be located to be safe from both motor vehicle traffic and theft. It would be desirable that outdoor racks be sheltered by a roof and enclosed for adequate security.

The inspection and maintenance program, which will be run as part of the prese annual safety inspection program, is expected to cost an average of $2 per vehicle inspected. Maintenance on vehicles that fail a first test so that they can pass a retest will cost an average of $3 above normal maintenance costs. The additional maintenance which should result from this program will also improve the fuel economy of the inspected vehicles.

The controls on gasoline transfer will save energy as well as reduce emissions, since the gasoline that would otherwise have evaporated will be collected by the control mechanism and be put back into the distribution system. These controls are expected to conserve approximately four million gallons of gasoline per year. Controls on aircraft ground operations can also be expected to save energy.

The various retrofit measures vary in expense, from $20 for a VSAD system to an estimated $130 for a catalytic converter. Although such devices are effective in reducing emissions, there are no significant secondary benefits from their installation except to avoid the need for less desirable alternatives. The most costly of these devices—the catalytic converter—will be reserved for use on fleet vehicles and taxicabs.

In some instances, as noted above, measures have been promulgated that were not formally proposed as regulations.

Parking Review. In all three jurisdictions, EPA proposed, as a contingency measure, a regulation for the review of new parking facilities to determine whether they would be consistent with the plan's VMT reduction goals. The public comments received stated that this measure was a "reasonably available alternative" measure and therefore should be promulgated not as a contingency but for general applicability. EPA agreed with the comments received, and intended to include this regulation as part of this action. However, in response to a court order this regulation was promulgated on November 12, 1973 (38 FR 31536, November 15, 1973). The regulation as promulgated requires review of all parking facilities over 250 spaces capacity prior to construction or modification.

Since VMT reductions are calculated from a predicted growth curve, and not simply from current levels, this regulation will help reduce VMT levels by reducing the future supply of parking on which future VMT growth would depend.

Although review of new highways was not proposed by any of the jurisdictions, there was substantial public comment on the issue of highway construction. It should be noted that Section 109(j) of the Federal Aid Highway Act, as amended, 23 U.S.C. 109(j), requires any Federal aid highway to be consistent with applicable implementation plans under the Clean Air Act. The plan for the Region is designed to provide a substantial VMT reduction. Accordingly, if any new Federal aid highway in the Region could be expected to lead to a VMT increase or to interfere with the attainment or maintenance of air quality standards, it would not be consistent with this plan.

Heavy Duty Vehicle Exclusion/Heavy Duty Vehicle Retrofit. The District of Columbia proposed to effect a 50 percent reduction in heavy duty vehicle emissions by banning all but specifically exempted deliveries from

6 a.m. to 9 a.m. This measure is disapproved because of the practical enforcement problems presented in public hearing testimony, because of the uncertain emissions reduction credit that can be assumed in the absence of precise definition of proposed exemptions (e.g., milk trucks, postal service trucks, sanitation trucks), and because of lack of detail in the local proposal. As an alternative measure, the possibility of installing appropriate retrofit devices on medium (6,000-10,000 pound, GVW) and heavy duty vehicles, as proposed by the State of Maryland and the Commonwealth of Virginia, has been investigated. Preliminary results of a vehicle test program, sponsored jointly by the EPA and the City of New York, indicate that catalytic retrofit of medium duty vehicles is indeed feasible, although application of the same devices to heavy duty vehicles indicated problems of deterioration of the retrofit device and the vehicle's exhaust system. Since the jurisdictions have agreed to participate in the ongoing test program, the Administrator has determined that catalytic retrofit will provide substantial reductions in both carbon monoxide and hydrocarbon emissions for all medium duty vehicles which are able to operate properly on unleaded 91 RON gasoline, and is promulgating such a regulation. In addition, for those medium duty vehicles which are unable to operate on 91 RON gasoline, an EGR-Airbleed system will be required.

Air/Fuel Retrofit of Heavy Duty Gasoline Powered Vehicles (greater than 10,000 pound GVW). Since the test program sponsored jointly by the EPA and New York City has suggested serious deterioration effects resulting from the use of catalytic retrofit devices on heavy duty gasoline powered vehicles, it is apparent that the state-of-the-art is insufficiently advanced to permit application of this control measure. However, the same test program has demonstrated the significant emission reductions which result from installation of air/fuel devices, exhaust gas recirculation, or carburetor modifications on heavy duty vehicles. Accordingly, the Administrator is promulgating a regulation which will require in-

stallation of appropriate noncatalytic retrofit devices on all heavy duty gasoline powered vehicles. In the event that the medium duty and heavy duty gasoline powered vehicle retrofit programs do not achieve the reductions anticipated, or the jurisdictions do not vigorously implement either programs, other control measures would become necessary.

Catalytic Retrofit of Fleet Vehicles. Since the emission reductions claimed by the jurisdictions for aircraft emissions could not be allowed in full, other measures which are "reasonably available" must be applied to meet the standards by the statutory deadline of 1977. For this reason, the Administrator is promulgating in essentially the form proposed a regulation requiring the retrofit of all light duty vehicles that are part of business or government vehicle fleets. The use of such a catalyst will reduce emissions by approximately 50 percent on each vehicle retrofitted. Installation of these catalysts will begin in mid-1976.

VSAD Retrofit of Pre-1968 Automobiles. Since the emission reductions claimed by the jurisdictions for aircraft emissions could not be allowed in full, it is necessary for the Administrator to promulgate "reasonably available" measures to meet the standards by the 1977 deadline. For this reason, the Administrator is promulgating, in essentially the form proposed, a regulation requiring the installation of VSAD devices on pre-1968 vehicles. The regulation has been modified to allow a jurisdiction to use any other device which can be demonstrated to achieve equivalent emission reductions on this class of vehicles (namely 9 percent reduction in CO and 25 percent reduction in HC). In addition, an exemption from the requirements of this regulation is allowed for antique or classic vehicles.

Monitoring and Reporting Regulation. This measure is included in the final rulemaking for all three jurisdictions to provide for monitoring the reductions that will result from the application of these regulations to mobile sources. This reporting will allow EPA sufficient time to evaluate the effectiveness of the measures included in this

plan. It will further provide the data upon which EPA will determine if any modification of the measures is necessary.

SUMMARY OF EXPECTED EMISSIONS REDUCTION FROM PLAN MEASURES

	Hydrocarbons		Carbon Monoxide	
	Tons per Peak Period	Percent of Total Reduction Required	Tons per Peak Period	Percent of Total Reduction Required
Base year emissions	63.3		1133	
Total reductions required	42.4		632	
Reductions from FMVCP	29.7	70	557	88
Stationary source emissions without control strategy	14.3			
Expected reductions from:				
a. Dry cleaning vapor recovery	1.1	2.6		
b. Gasoline handling vapor strategy	5.0	11.7		
Mobile source emissions without control strategy	19.3		576	
Expected reductions from:				
a. Transportation package	2.9	6.9	26	4.1
b. Inspection/maintenance	1.6	3.8	34	5.4
c. VSAD retrofit	.4	.9	3	.5
d. Catalytic retrofit of fleet automobiles	.2	.5	5	.8
e. Truck retrofit program	.5	1.2	20	3.1
f. Aircraft program	1.0	2.4		
Total reductions	42.4	100.0	645	101.9
Emissions remaining	20.9		488	

FINDINGS

The plan approved today applies a full range of the emission controls that have been used in transportation control plans for other areas of the country. The provisions for stationary source control, inspection and maintenance, bus lanes, computer car pool matching, parking lot review, and certain retrofits are common to many plans. The provisions for special charges on commuter parking is also being used in other heavily polluted areas of the country such as Boston and in California.

ECONOMIC AND SOCIAL EFFECTS

EPA, while recognizing that inconvenience to some individuals will necessarily result from the National Capital Area plan, believes that there will not be significant

economic or social disruption. In general, commuter travel by single-passenger automobile will become much less attractive as that mode of transportation loses many of its present advantages. This, however, should not be seen as a deliberate attempt by EPA to hinder and frustrate the many individuals who presently rely upon the automobile to commute to and from work. The transportation plan provides for alternative transit choices which, when fully operational, will make commuting far easier than it is today. In the long run, then, persons in the metropolitan area should benefit from cleaner air, less vehicle congestion and a more balanced system of transportation.

To achieve this result, the Region's bus fleet will be greatly expanded within the next few years and many additional routes and service areas will be established. The efficiency of the entire bus system will be further improved by the new busline network. The 180 miles of bicycle lanes will increase the attractiveness of travel by bicycle. Car pooling will become significantly easier as the computer-aided car pool matching system goes into operation. And, in the near future, the new subway system will have a very positive effect.

There will be other significant advantages to the plan announced today. Recent events have made clear how essential it is to economize on energy use. Transportation at present accounts for over a quarter of the energy consumed in this country. Automobiles consume three-quarters of the energy used for transportation, or about twenty percent of the total. Only about a quarter of the energy consumed by an automobile engine does useful work. The rest is wasted. Indeed, even the energy used to drive the vehicle is largely wasted in any functional sense, since most American cars are far larger and heavier than they need to be for their normal job of moving one or two people around. Our present auto-based transportation system using standard-sized cars moves human beings about by moving two tons of metal along with each of them. There can be no better place to begin to end our exclusive reliance on the automobile than in the cities, where this step will not only save energy, but will also protect human health by cleaning up the air.

These measures are not expected to affect the shopping centers of downtown Washington, since the most significant of them—the parking surcharge a' ' the bus lanes —will only affect those traveling during the commuting hours and parking most of the day in one location.

The inspection and maintenance program, which will be run as part of the present annual safety inspection program, is expected to cost an average of $2 per vehicle inspected. Maintenance on vehicles that fail a first test so that they can pass a retest will cost an average of $3 above normal maintenance costs. The additional maintenance which should result from this program will also improve the fuel economy of the inspected vehicles.

The controls on gasoline transfer will save energy as well as reduce emissions, since the gasoline that would otherwise have evaporated will be collected by the control mechanism and be put back into the distribution system. These controls are expected to conserve approximately 11 thousand gallons of gasoline per day. Controls on aircraft ground operations can also be expected to save energy.

The various retrofit measures vary in expense, from $20 for a VSAD system to an estimated $130 for a catalytic converter. Although such devices are effective in reducing emissions, there are no significant secondary benefits from their installation except to avoid the need for less desirable alternatives. The most costly of these devices—the catalytic converter—will be reserved for use on fleet vehicles and taxicabs.

In some instances, as noted above, measures have been promulgated that were not formally proposed as regulations. This was done because of the requirement of the court order that a plan applying all "reasonably available" measures be promulgated for the Region without further delay. EPA, however, invites public comment on these and other aspects of today's promulgation, and will revise the plan if revision seems appropriate in the light of the comments received. Comments should be submitted no later than December 31, 1973, to the Transportation Control Staff, Office of Air Programs, Room 937-W, En-

vironmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

It is the desire of the Environmental Protection Agency that the plan to attain and maintain the carbon monoxide and photochemical oxidant standards in the National Capital Interstate Air Quality Control Region be a Regional plan devised and carried out by the affected local jurisdictions or their representatives. The combination of strategies approved and promulgated today to a great extent form such plans. Furthermore, if the three local jurisdictions submit additional transportation control measures and these measures are approvable, portions of this plan can be rescinded. It should be noted, however, that this plan constitutes a final rulemaking and its provisions are enforceable under the Clean Air Act.

(Sec. 110(c) and 301(a), Clean Air Act (42 U.S.C. 1857c-5(c) and 1857(g).)

Dated: November 20, 1973.

RUSSELL E. TRAIN,
Administrator.

Subpart J of Part 52 of 40 CFR Chapter I is amended as follows:

Subpart J—District of Columbia

1. In § 52.470 paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 54.470 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

* * * * *

(2) April 28, 1972, by the District of Columbia.

(3) April 19, July 9 and 16, 1973, by the District of Columbia.

* * * * *

2. Section 52.472 is amended to read as follows:

§ 52.472 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves the District of Columbia's plan for the attainment and maintenance of the national standards.

(b) With respect to the transportation control strategies submitted on April 19, July 9, and July 16, 1973, the Administrator approves the measures for parking surcharge, car pool locator, vehicle inspection, express bus lanes, increased bus fleet and service, elimination of free parking by private employers, with exceptions set forth in §§ 52.476, 52.483, 52.486, and 52.479.

(c) With respect to the transportation control strategies submitted on April 19, July 9, and July 16, 1973, the Administrator disapproves the strategies for heavy duty vehicle exclusion, as set forth in §§ 52.474 and 52.483.

3. Section 52.474 is revised to read as follows:

§ 52.474 Legal authority.

(a) The requirements of § 51.11(c) are not met with respect to the heavy duty vehicle restriction strategy because of lack of legal authority for the purposes claimed.

4. In Section 52.476 paragraphs (c) through (h) are added to read as follows:

§ 52.476 Compliance schedules.

* * * *

(c) With respect to transportation control strategies submitted by the District of Columbia, the requirements of § 51.15 are not fully met for the measures for parking surcharge, elimination of free on-street commuter parking, elimination of free employee parking, increased bus fleet and service, and exclusive bus lanes. Provisions to implement the requirements of § 51.15 are promulgated in this section.

(d) With respect to the parking surcharge measure approved in § 52.472:

(1) The District of Columbia shall no later than June 30, 1974, submit to the Administrator for his approval a

precise description of areas within the District of Columbia which are at that time adequately served by mass transit, and those areas which in the judgment of the District of Columbia will be adequately served by mass transit by June 30, 1975. The documentation and policy assumptions used to select these areas shall be included with this submission.

(2) The District of Columbia shall by June 30, 1975, and each succeeding year submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the District of Columbia can affirmatively demonstrate that no additional areas can be included.

(3) The District of Columbia shall, no later than October 1, 1974, submit to the Administrator legally adopted regulations instituting the parking surcharge on all long-term (6 hours) parking in all commercial parking facilities (except to the extent they are used for residential parking) and all facilities subject to §§ 52.476 (f) and 52.486 in those areas adequately served by mass transit within the District of Columbia portion of the National Capital Interstate AQCR. The parking surcharge shall be complemented and collected according to the following schedule:

June 30, 1975-Dec. 31, 1975	$0.50
January 1, 1976-June 30, 1976	1.00
July 1, 1976-Dec. 31, 1976	1.50
January 1, 1977	2.00

All monies collected under this program shall be turned over to the District of Columbia. All proceeds from this program shall be used for the expansion and operation of mass transit except for a reasonable amount for the costs of administration and collection of the surcharge. Any handicapped person who is unable to use mass transit shall not be subject to the surcharge. The parking surcharge shall not apply to any parking begun between the hours of 6 p.m. and 2 a.m.

(e) With respect to the measure for elimination of free on-street commuter parking approved in § 52.427:

(1) The District of Columbia shall, no later than June 30, 1974, submit to the Administrator for his approval a compliance schedule, including legally adopted regulations, enforcement procedures, and a description of resources available. The compliance schedule shall provide:

(i) For implementing the on-street commuter parking ban program in all areas within which a surcharge will be required by paragraph (d) of this section. The program shall prohibit all parking for more than two hours by non-residents of the area subject to the ban during the hours from 7 p.m., Monday through Friday (excepting holidays) on any street within such areas. The program shall also provide for a sticker system, under which residents of such an area may be exempted from the ban, and for a system (whether by notification to the enforcement authorities, or otherwise) for also exempting bona fide visitors to residents of such areas from the ban.

(ii) The precise resources that will be devoted to enforcing this measure, the method of enforcement to be used (for example, chalking tires), and the penalties for violation. The compliance schedule shall at a minimum provide that violators shall be subject to a $10.00 fine.

(f) With respect to the measure for elimination of free employee parking approved in § 52.472:

(1) For purposes of this paragraph "Commercial Parking Rate" shall mean the average daily rate charged by the three operators of parking facilities containing 25 or more commercial parking spaces that are closest in location to any employee parking space affected by this paragraph.

(2) The District of Columbia shall, no later than June 30, 1974, submit to the Administrator for his approval a precise description of areas within the District of Columbia which are at that time adequately served by mass transit, and those areas which in the judgment of the District of Columbia will be adequately served by mass transit by June 30, 1975. The documentation and policy assump-

tions used to select these areas shall be included with this submission.

(3) The District of Columbia shall by June 30, 1975, and each succeeding year, submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the District of Columbia affirmatively demonstrate that no additional areas can be included.

(4) The District of Columbia shall no later than October 1, 1974, submit to the Administrator legally adopted regulations instituting commercial parking rates by June 30, 1975, on all employers, public (excluding Federal Government) or private, with 25 or more employee spaces located in those areas adequately served by mass transit within the District of Columbia portion of the National Capital Interstate AQCR. Any handicapped person who is unable to use mass transit shall not be subject to the commercial parking rate. The commercial parking rate shall not apply to employee parking begun between the hours of 6 p.m. and 2 a.m.

g) With respect to the measure for increased bus fleet and service approval in § 52.472: The District of Columbia shall no later than January 31, 1974, submit a compliance schedule to put the program into effect. The compliance schedule shall, at a minimum, provide that the District of Columbia shall, on or before March 1, 1974, submit to the Administrator a statement, signed both by a representative of the Washington Metropolitan Area Transit Authority (WMATA) indicating that, in the judgment of both of them, financial commitments have been made by the District of Columbia for the purchase of buses. This statement, taken in conjunction with the commitments made by the Commonwealth of Virginia and the State of Maryland, must be sufficient to enable WMATA to purchase in the fiscal year beginning the next July 1, the number of buses below:

Fiscal Year 1975—175 buses
Fiscal Year 1976—150 buses
Fiscal Year 1977—150 buses

The statement shall also indicate that WMATA has in fact committed to purchase that number of buses.

(h) With respect to the express bus lane measure approved in § 52.472:

(1) The District of Columbia shall no later than January 1, 1975, establish exclusive bus lanes in the following corridors:

(i) U.S. Route 50 from District of Columbia-Maryland boundary to Washington Central Business District (hereafter CBD).

(ii) Pennsylvania Avenue from the District of Columbia-Maryland boundary to the Washington CBD.

(iii) South Capitol Street from Bolling Air Force Base to Independence Avenue.

(iv) U.S. Route 50 from the District of Columbia-Virginia boundary to the Washington CBD.

(v) In the District of Columbia portion of a route connecting the Dulles Access Road from the Reston Interchange to the Washington CBD.

(vi) Georgia Avenue-13th Street from the District of Columbia-Maryland boundary to the Washington CBD.

(vii) U.S. Route 240 from the District of Columbia-Maryland boundary to Sheridan Circle.

(viii) New Hampshire Avenue from the District of Columbia-Maryland boundary to Grant Circle.

Such lanes shall be inbound during the morning peak and outbound during the evening peak period.

(2) The District of Columbia shall submit to the Administrator, no later than March 1, 1974, a schedule showing the steps which it will take to establish exclusive bus lanes in those corridors enumerated in paragraph (h) (1) of this section. Each schedule shall be subject to the approval by the Administrator and shall include as a minimum the following:

(i) Identification of streets or highways that shall have portions designated for exclusive bus lanes.

(ii) The date by which each street or highway shall be designated.

(3) Exclusive bus lanes must be prominently indicated by distinctively painted lines, pylons, overhead signs, or physical barriers.

(4) Application for substitution of a corridor for any of those listed in paragraph (h) (1) of this section shall be made by the District of Columbia for the Administrator's approval no later than March 1, 1974.

5. Section 52.479 is amended by adding paragraphs (b) and (c) to read as follows:

§ 52.479 Source surveillance.

* * * * *

(b) The requirements of § 51.19(d) are not met with respect to the strategies for parking surcharge, car pool locator, vehicle inspection, express bus lanes, increased bus fleet and service, elimination of free on-street parking, and elimination of free parking by employers.

(c) Monitoring transportation trends. (1) This section is applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(2) In order to assure the effectiveness of the inspection and maintenance program approved in § 52.472 and the retrofit devices required pursuant to §§ 52.490, 52.492, 52.494, 52.495, and 52.496, the State shall monitor the actual per vehicle emissions reductions occurring as a result of such measures. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period January 1 to March 31, 1976.

(3) In order to assure the effective implementation of the parking surcharge, car pool locator, express bus lanes, increased bus fleet and service, elimination of free on-street community parking and elimination of free parking by employers, the District of Columbia shall monitor vehicle miles traveled and average vehicle speeds for each area in which such measures are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. All data obtained from such monitoring shall be included in the quarterly report submitted

to the Administrator by the District of Columbia in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period from July 1 to September 30, 1974. The vehicle miles traveled and vehicle speed data shall be collected on a monthly basis and submitted in a format similar to Table 1.

TABLE 1

Time period Affected area			
	Roadway type	VMT or average vehicle speed	
		Vehicle type (1)	Vehicle type (2)[1]
Freeway			
Arterial			
Collector			
Local			

[1] Continue with other vehicle types as appropriate.

(4) No later than March 1, 1974, the District of Columbia shall submit to the Administrator a compliance schedule to implement this section. The program description shall include the following:

(i) The agency or agencies responsible for conducting, overseeing, and maintaining the monitoring program.

(ii) The administrative procedures to be used.

(iii) A description of the methods to be used to collect the emission data, VMT data, and vehicle speed data; a description of the geographical area to which the data applies; identification of the location at which the data will be collected; and the time periods during which the data will be collected.

§ 52.481 [Amended]

6. In § 52.481 the attainment date table is revised by replacing the date "May 31, 1975", for attainment of the national standards for carbon monoxide and photochemical

oxidants (hydrocarbons) in the National Capital Interstate Region with the date "May 31, 1977."

§ 52.482 Transportation and land use controls.

(a) To ensure implementation of the vehicle emission inspection program approved in § 52.472, the District of Columbia shall submit legally adopted regulations by March 1974, which contain the same elements as the proposed regulations contained in the July 9, 1973, submission on pages 19 and 20.

8. Section 52.483 is revised to read as follows:

§ 52.483 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(2)(iv) are not met because the plan does not specify the date on which the elimination of on-street parking measures would become effective. The requirements of this section are partially met with respect to the increased bus fleet and service strategy since the plan does not identify secure, adequate commitments to insure that the fleet expansion and service will occur within the proposed schedule.

(b) The requirements of § 51.14(c) are not met because the approvable measures are not adequate to attain the national standards. With respect to the reduction in emissions claimed for control of aircraft taxiing operations, they are higher than those which the Administrator believes can be realistically and safely obtained, and no control measures are contained to implement them. With respect to the reduction claimed for heavy duty vehicle exclusion, there is not adequate authority to achieve the reductions claimed.

§ 52.484 [Reserved]

9. Section 52.484 is revoked and reserved.

§ 52.485 [Reserved]

10. Section 52.485 is revoked and reserved.

11. Section 52.486 is added to read as follows:

§ 52.486 Rules and regulations.

(a) The requirements of § 51.22 are not met because the plan does not contain adopted regulations for reducing evaporative losses from gas handling and dry cleaning. Substitute regulations are promulgated in §§ 52.487, 52.488, and 52.489.

12. Sections 52.486 through 52.496 are added to read as follows:

§ 52.486 Federal parking facilities.

(a) Definitions. For the purposes of this section,

(1) "Administrative Officer" means the Administrator of General Services, the Marshal of the Supreme Court of the United States, the Architect of the Capitol, and any other representative of a Federal Government entity designated as such for the purposes of this section by the Administrator.

(2) "Commercial value" means a value which approximates commercial charges for space and services for like facilities in the immediate vicinity of a Federal facility. In the absence of commercial facilities, commercial value should be established using the fair market value of a Federal facility and the cost of services being provided as a basis.

(3) "Designated area" means an area defined by § 52.476(d)(1).

(4) "Federal Government entity" means a Federal department, agency, bureau, board, office, commission, district, or an instrumentality of the executive, legislative, and judicial branches of the Federal Government. Foreign embassies are not subject to this regulation.

(5) "Parking facility" (also called "facility") means any lot, garage, building or structure, or any combination or portion thereof, in or on which motor vehicles are temporarily parked.

(6) "Residential parking space" means any parking space used primarily for the parking of vehicles of persons residing within one-half mile of the space.

(b) This section shall be applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) Commencing July 1, 1975, rates based upon the commercial value shall be charged employees for parking a motor vehicle in any facility which is owned, operated, leased, or otherwise controlled by any Federal Government entity and which is located in a designated area; *Provided, however*, That such commercial value shall not apply (1) to parking begun between the hours of 6 p.m. and 2 a.m., (2) to residential parking spaces contained in or on the facility, (3) to vehicles owned or leased by the Federal Government, and (4) to any vehicle exempted under subparagraph (d) (2) of this section.

(d) (1) Each Administrative Officer shall adopt a plan which shall require each Federal Government entity under his authority to which this section applies to implement paragraph (c) of this section.

(2) The plan may provide for exemption from the requirements of paragraph (c) of this section for space assigned to handicapped persons who are physically unable to use mass transit.

(3) The Administrator of the Environmental Protection Agency will promulgate such a plan by May 1, 1974, for any parking facility of any Federal Government entity to which this section applies which is not under the authority of an Administrative Officer. Any such Federal Government entity may apply to the Administrator before January 4, 1974, for designation of an "Administrative Officer" and permission to submit its own plan.

(4) Each Administrative Officer shall submit to EPA, no later than July 1, 1974, an outline of the plan required by this paragraph, and the effective date of the plan, which date shall be no later than July 1, 1975. The plan required by this paragraph covering all subject facilities of government entities which are part of the executive branch of the Federal Government shall be coordinated with the Administrator of General Services.

§ 52.487 Gasoline transfer vapor control.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate AQCR.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily adapted to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.488.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of one thousand gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Every owner or operator of a stationary storage container or delivery vessel subject to this section shall comply with the following compliance schedule:

(1) April 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) May 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) February 1, 1976—Complete on-site construction or installation of emission control equipment.

(5) March 1, 1976—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after March 1, 1976. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application for the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15 (b) and (c).

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by March 1, 1976, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after March 1, 1976, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.488 Control of evaporative losses from the filling of vehicular tanks.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the District of Columbia portion of the National Capital Interstate AQCR.

(c) A person shall not transfer gasoline to an automotive fuel tank from a gasoline dispensing system unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section may consist of vapor-tight return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, refrigeration-condensation system or its equivalent.

(e) Components of the systems required by § 52.487 may be used for compliance with paragraph (c) of this section.

(f) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing and using in the most effective manner a system required by paragraph (c) of this section.

(g) Every owner or operator of a gasoline dispensing system subject to this section shall comply with the following compliance schedule.

(1) February 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) June 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) May 1, 1977—Complete on-site construction or installation of emission control equipment or process modification.

(5) May 31, 1977—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each

increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1977. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(j) Any gasoline dispensing facility subject to this section which installs a gasoline dispensing system after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (g) of this section as far as possible. Any facility subject to this section which installs a gasoline dispensing system after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.489 Control of dry cleaning solvent evaporation.

(a) Definitions:

(1) "Dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(2) "Organic solvents" means organic materials, including diluents and thinners which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(3) "Photochemically reactive solvent" means any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, as applied to the total volume of solvent.

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cycloolefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenyenl [sic]: 8 percent;

(iii) A combination of ethylbenyene [sic] or ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

(b) This section is applicable to the District of Columbia portion of the National Capital Interstate Region.

(c) No person shall operate a dry cleaning operation using other perchloroethylene, 1,1,1-trichloroethane, or saturated halogenated hydrocarbons unless the uncontrolled organic emissions from such operation are reduced at least 85 percent; provided, that dry cleaning operations emitting less than 8 pounds per hour and less than 40 pounds per day of uncontrolled organic materials are exempt from the requirement of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic emissions being incinerated must be oxidized to carbon dioxide.

(e) Any owner or operator of a source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents no later than January 31, 1974, or by controlling emissions as required by paragraphs (c) and (d) of this section no later than May 31, 1975.

§ 52.490 Inspection and maintenance program.

(a) Definition:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles that need emission control-related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 lb GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with the meanings so defined.

(b) This section is applicable within the District of Columbia portion of the National Capital Interstate AQCR.

(c) In connection with the light duty vehicle inspection and maintenance program for the District of Columbia approved by the Administrator pursuant to § 52.-472 the District shall establish an inspection and maintenance program applicable to all medium duty and heavy duty vehicles registered in the District that operate on public streets or highways over which it has ownership or control. The District may exempt any class or category of vehicles that the District finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the District shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all medium-duty and heavy-duty motor vehicles at periodic intervals not more than 1 year apart by means of a loaded emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustment and/or a suitable type of physical tagging. This program shall include penalties for violation.

(5) Provisions for beginning the first inspection cycle by January 1, 1975, completing it by January 1, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After January 1, 1976, the District shall not register or allow to operate on public streets or highways any medium-duty or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After January 1, 1976, no owner of a medium-duty or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragrah (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The District shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section.

§ 52.491 Bicycle lanes and bicycle storage facilities.

(a) Definitions:

(1) "Bicycle" means a two-wheel, nonmotor powered vehicle.

(2) "Bicycle lane" means a route for the exclusive use of bicycles, either constructed specifically for that purpose or converted from an existing lane.

(3) "Bicycle parking facility" means any storage facility for bicycles, which allows bicycles to be locked securely.

(4) "Parking space" means the area allocated by a parking facility for the temporary storage of one automobile.

(5) "Parking facility" means a lot, garage, building, or portion thereof, in or on which motor vehicles are temporarily parked.

(b) This section shall be applicable in the District of Columbia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before July 1, 1976, the District of Columbia shall establish a network of bicycle lanes linking residential areas with employment, educational, and commercial centers in accordance with the following requirements:

(1) The network shall contain no less than 60 miles of bicycle lanes in addition to any in existence as of November 20, 1973.

(2) Each bicycle lane shall at a minimum:

(i) Be clearly marked by signs indicating that the lane is for the exclusive use of bicycles (and pedestrians, if necessary);

(ii) Be separated from motor vehicle traffic by appropriate devices, such as physical barriers, pylons, or painted lines;

(iii) Be regularly maintained and repaired;

(iv) Be of a hard, smooth surface suitable for bicycles;

(v) Be at least 5 feet wide for one-way traffic, or 8 feet wide for two-way traffic;

(vi) If in a street used by motor vehicles, be a minimum of 8 feet wide whether one-way or two-way; and

(vii) Be adequately lighted.

(3) Off-street bicycle lanes which are not reasonably suited for commuting to and from employment, educational, and commercial centers shall not be considered a part of this network.

(4) On or before October 1, 1974, the District of Columbia shall establish 25 percent of the total mileage of the bicycle lane network; on or before June 1, 1975, 50 percent of the total mileage shall be established; on or before July 1, 1976, 100 percent of the total mileage shall be established.

(d) On or before June 1, 1974, the District of Columbia shall submit to the Administrator a comprehensive study of a bicycle lane and bicycle path network. The study shall include, but not be limited to the following:

(1) A bicycle user and potential user survey, which shall at a minimum determine:

(i) For present bicycle riders, the origin, destination, frequency, travel time, and distance of bicycle trips;

(ii) In high density employment areas, the present modes of transportation of employees and the potential modes of transportation, including the number of employees who would convert to the bicycle mode from other modes upon completion of the bicycle lane network described in paragraph (c) of this section.

(2) A determination of the feasibility and location of on-street bicycle lanes.

(3) A determination of the feasibility and location of off-street lanes.

(4) A determination of the special problems related to feeder lanes to bridges, on-bridge lanes, feeder lanes to METRO and railroad stations, and feeder lanes to fringe parking areas, and the means necessary to include such lanes in the bicycle lane network described in paragraph (c) of this section.

(5) A determination of the feasibility and location of various methods of safe bicycle parking.

(6) The study shall make provision for the receipt of public comments on any matter within the scope of the study, including the location of the bicycle lane network described in paragraph (c) of this section.

(e) By June 1, 1974, in addition to the comprehensive study required pursuant to paragraph (d) of this section, the District of Columbia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish this network pursuant to paragraphs (c) and (h) of this section. The compliance schedule shall identify in detail the names of streets that will provide bicycle lanes and the location of any lanes to be constructed especially for bicycle use. It shall also include a statement indicating the source, amount, and adequacy of funds to be used in implementing this section, and the text of any needed statutory proposals and needed regulations which will be proposed for adoption.

(f) On or before October 1, 1974, the District of Columbia shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

(g) On or before May 1, 1974, the District of Columbia shall establish a pilot bicycle lane from Key Bridge via Pennsylvania Avenue past the White House to the U.S. Capitol and from the Capitol along Pennsylvania Avenue to Alabama Avenue SE.

(h) On or before June 1, 1975, the District of Columbia shall require all owners and operators of parking facilities containing more than 50 parking spaces (including both free and commercial facilities) within the area specified in paragraph (b) of this section to provide spaces for the storage of bicycles in the following ratio: one automobile-sized parking space (with a bicycle parking facility) for the storage of bicycles for every 75 parking spaces for the storage of autos. The District shall also require that:

(1) Bicycle parking facilities shall be so located as to be safe from motor vehicle traffic and secure from theft. They shall be properly repaired and maintained.

(2) The METRO Subway System shall provide a sufficient number of safe and secure bicycle parking facilities at each station to meet the needs of its riders.

(3) All parking facilities owned, operated, or leased by the Federal Government shall be subject to this paragraph.

(4) Any owner or operator of a parking facility which charges a fee for the storage of motor vehicles shall store bicycles at a price per unit per hour which is no greater in relation to the cost of storing them than is the price of parking for a motor vehicle in relation to the cost of storing it. Unless the owner or operator makes an affirmative showing to the District of Columbia of different facts, and agrees to charge in conformity with that showing, the ratio in costs and prices shall be determined by the maximum number of bicycles that can be stored in a single standard-sized automobile parking space.

§ 52.492 Medium duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1973 and earlier medium-duty vehicles of at least 15 and 30 percent, respectively.

(2) "Medium-duty vehicle" means a gasoline powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the District of Columbia portion of the National Capital Interstate AQCR.

(c) The District of Columbia shall establish a retrofit program to ensure that on or before May 31, 1976, all

medium-duty vehicles of model years prior to 1973 which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52.495 which are registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an air/fuel control device. No later than February 1, 1974, the District of Columbia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section. The compliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the District shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1976.

(4) A provision that no later than May 31, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.490 unless it has been first equipped with an approved air/fuel control device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and abil-

ity to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emission testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1976, the District shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implemented by this section.

(g) The District may exempt any class or category of vehicles from this section which the District finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the District demonstrates to the Administrator that air/fuel control devices or other devices approved pursuant to this section are not commercially available.

§ 52.494 Heavy duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from heavy-duty vehicles of at least 30 and 40 percent, respectively.

(2) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 lb gross vehicle weight (GVW) or more.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the District of Columbia portion of the National Capital Interstate AQCR.

(c) The District of Columbia shall establish a retrofit program to ensure that on or before May 31, 1977, all heavy-duty vehicles registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control device, or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an air/fuel control device. No later than April 1, 1974, the District of Columbia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section. The compliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the District shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d) (3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.490 unless it has been first equipped with an approved air/fuel control device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations

shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the District shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The District may exempt any class or category of vehicles from this section which the District finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the District demonstrates to the Administrator that air/fuel control or other devices approved pursuant to this section are not commercially available.

§ 52.495 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device that uses a catalyst installed in the exhaust system of a vehicle (and if necessary includes an air pump) so as to achieve a reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 50 and 50 percent, respectively, from light-duty vehicles of 1971 through 1975 model years, and of at least 50 and 50 percent, respectively, from medium duty vehicles of 1971 through 1975 model years.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Fleet vehicle" means any of 5 or more light-duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light-duty vehicle-for-hire) owned by any individual or business.

(5) All other terms used in this section that are defined in Part 51, Appendix N, are used herein with meanings so defined.

(b) This section is applicable within the District of Columbia portion of the National Capital Interstate AQCR.

(c) The District of Columbia shall establish a retrofit program to ensure that on or before May 31, 1977, all light-duty fleet vehicles of model years 1971 through 1975 and all medium-duty vehicles of model years 1971 through 1975 which are registered in the area specified in paragraph (b) of this section and are able to operate on 91RON gasoline are equipped with an appropriate oxidizing catalyst retrofit device or other device as approved by the Administrator, that will reduce exhaust emissions of hydrocarbon and carbon monoxide to the same extent as an oxidizing catalyst retrofit device. No later than April 1, 1974, the District of Columbia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section. The compliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the District shall submit legally adopted regulations to the Administrator establishing such a program.

The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by §§ 52.472 and 52.490 unless it has been first equipped with an approved oxidizing catalyst device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the District shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) Any vehicle which is manufactured equipped with an oxidizing catalyst, or which is certified to meet the

original 1975 light duty vehicle emissions standards set forth in section 202(b)(1)(a) of the Clean Air Act of 1970 (without regard to any suspension of such standards), shall be exempt from the requirements of this section.

§ 52.496 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) "Vacuum spark advance disconnect retrofit" means a device or system installed on a motor vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed, so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1967 and earlier light-duty vehicles of at least 25 and 9 percent, respectively.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb. gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, are used herein with meanings so defined.

(b) This section is applicable within the District of Columbia portion of the National Capital Interstate AQCR.

(c) The District of Columbia shall establish a retrofit program to ensure that on or before January 1, 1976, all light-duty vehicles of model years prior to 1968 registered in the area specified in paragraph (b) of this section are equipped with an appropriate vacuum spark advance disconnect retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as a vacuum spark advance disconnect retrofit. No later than February 1, 1974, the District shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section. The com-

pliance schedule shall include a date by which the District shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the District shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d) (3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than January 1, 1976.

(4) A provision that starting no later than January 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.472 unless it has been first equipped with an approved vacuum spark advance disconnect retrofit device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation, or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1976, the District shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applic-

able standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After January 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The District may exempt any class or category of vehicles from this section which the District finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that vacuum spark advance disconnect devices or other devices approved pursuant to this section are not commercially available.

Subpart V of 40 CFR Part 52 is amended as follows:

Subpart V—Maryland

1. In § 52.1070 paragraph (c) is revised to read as follows:

§ 52.1070 Identification of plans.

* * * * *

(c) Supplemental information was submitted on:

(1) February 25, March 3, March 7, April 4, April 28, and May 8, 1972, by the Maryland Bureau of Air Quality Control; and

(2) April 16, May 5, June 15, June 22, June 28, and July 9, 1973.

2. Section 52.1072 is amended by revising paragraph (b) to read as follows:

§ 52.1072 Extensions.

* * * * *

(b) The Administrator hereby extends for two years the attainment dates for the national standards for carbon monoxide and photochemical oxidants in the Maryland portion of the National Capital Interstate Region.

3. Section 52.1073 is revised to read as follows:

§ 52.1073 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Maryland's plans for the attainment and maintenance of the national standards.

(b) With respect to the transportation control strategies submitted on April 16, May 5, June 15, June 22, June 28, and July 9, 1973, the Administrator approves the measures for the National Capital region for car pool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking, elimination of free employee parking, parking surcharge, dry cleaning solvent use, and gasoline vapor recovery with the exceptions set forth in §§ 52.1074, 52,1077, 52.1080, 52.1081, 52.1082, and 52.1084.

(c) With respect to the transportation control strategies submitted on April 16, May 5, June 15, June 22, June 28, and July 9, 1973, the Administrator disapproves the measures for inspection programs, heavy duty vehicle inspection and retrofit, for the reasons set forth in § 52.1074. Rectifying provisions to require these programs to be implemented are promulgated in §§ 52.1089, 52.1091, and 52.1092.

4. Section 52.1074 is revised to read as follows:

§ 52.1074 Legal authority.

(a) The requirements of § 51.11(b) of this chapter are not met with respect to the vehicle inspection program and heavy duty vehicle inspection and retrofit because definite commitment to obtain legal authority was not made.

(b) The requirements of § 51.11(f) of this chapter are not fully met for the Maryland portion of the National Capital region because it is not clearly demonstrated that all local agencies have requisite legal authority, or that the State retains responsibility for implementing the transportation control measures.

5. In § 52.1077, paragraph (b) is amended by adding the following sentence at the end of the paragraph and paragraph (c) is added as follows:

§ 52.1077 Source surveillance.

* * * * *

(b) * * * Rectifying provisions are promulgated in this section.

(c) *Monitoring Transportation Sources.* (1) This section is applicable to the State of Maryland.

(2) In order to assure the effectiveness of the inspection and maintenance program and the retrofit devices required under §§ 52.1089, 52.1091, 52.1092, 52.1093, and 52.1094. State shall monitor the actual per-vehicle emissions reductions occurring as a result of such measures. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period January 1 to March 31, 1976.

(3) In order to assure the effective implementation of the car pool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking, elimination of free employee parking, and the parking surcharge approved in § 52.1073, the State shall monitor vehicle miles travelled and average vehicle speeds for each area in which such sections are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the State of Maryland in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period from July 1 to September 30, 1974. The vehicle miles travelled and vehicle speed data shall be collected on a monthly basis and submitted in a format similar to Table 1.

TABLE 1

Time period Affected area		
Roadway type	VMT or average vehicle speed	
	Vehicle type (1)	Vehicle type (2)[1]
Freeway		
Arterial		
Collector		
Local		

[1] Continue with other vehicle types as appropriate.

(4) No later than March 1, 1974, the State shall be submitted [sic] to the Administrator a compliance schedule to implement this section. The program description shall include the following:

(i) The agency or agencies responsible for conducting overseeing, and maintaining the monitoring program.

(ii) The administrative procedures to be used.

(iii) A description of the methods to be used to collect the emission data, VMT data, and vehicle speed data; a description of the geographical area to which the data apply; identification of the location at which the data will be collected; and the time periods during which the data will be collected.

§ 52.1078 [Amended]

6. In § 52.1078, the attainment date table is revised by replacing the date "May 31, 1975," for attainment of the national standards for carbon monoxide and photochemical oxidants in the Maryland portion of the National Capital Interstate Region with the date "May 31, 1977," and by deleting footnote "e".

§ 52.1079 [Reserved]

7. Section 52.1079 is revoked and reserved.

8. In § 52.1080, paragraphs (c) through (h) are added to read as follows:

§ 52.1080 Compliance schedule.

* * * * *

(c) With respect to the transportation control strategies submitted by the State, the requirements of § 51.15 of this chapter are not fully met for the measures for parking surcharge, elimination of free on-street commuter parking, elimination of free employee parking, increased bus fleet and service, and exclusive bus lanes. Provisions to implement the requirements of § 51.15 of this chapter are promulgated in this section.

(d) With respect to the parking surcharge measure approved in § 52.1073:

(1) The State of Maryland shall no later than June 30, 1974, submit to the Administrator for his approval a precise description of areas within the Maryland portion of the National Capital Interstate AQCR which are at the time adequately served by mass transit, and those areas which in the judgment of the State will be adequately served by mass transit by June 30, 1975. The documentation and policy assumptions used to select these areas shall be included with this submission.

(2) The State of Maryland shall by June 30, 1975, and each succeeding year submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the State can affirmatively demonstrate that no additional areas can be included.

(3) Each political subdivision of the State of Maryland which has jurisdiction over any area (or portion thereof) designated as adequately served by mass transit shall, not later than October 1, 1974, submit to the Administrator legally adopted regulations instituting the parking surcharge on all long-term (6 hours) parking in all commercial parking facilities (except to the extent they are used for residential parking) and all facilities subject to §§ 52.1080(f) and 52.1085 in those areas adequately served by mass transit within the control of such political subdivision. The parking surcharge shall be im-

plemented and collected according to the following schedule:

June 30, 1975-Dec. 31, 1975	$0.50
January 1, 1976-June 30, 1976	1.00
July 1, 1976-Dec. 31, 1976	1.50
January 1, 1977	2.00

All monies collected under this program shall be turned over to the appropriate political subdivision. All proceeds from this program shall be used for the expansion and operation of mass transit, except for a reasonable amount for the costs of administration and collection of the surcharge. Any handicapped person who is unable to use mass transit shall not be subject to the surcharge. The parking surcharge shall not apply to any parking begun between the hours of 6 p.m. and 2 a.m.

(c) With respect to the measure for elimination of free on-street commuter parking approved in § 52.1073:

(1) Each political subdivision of the State of Maryland within the National Capital Interstate AQCR shall, no later than June 30, 1974, submit to the Administrator for his approval a compliance schedule, including legally adopted regulations, enforcement procedures, and a description of resources available. The compliance schedule shall provide:

(i) For implementing the on-street parking ban in all areas within which a surcharge will be required by paragraph (d) of this section. This program shall prohibit all parking for more than two hours by non-residents of the area subject to the ban during the hours from 7 a.m. to 7 p.m. Monday through Friday (excepting holidays) on any street within such areas. The program shall also provide for a sticker system, under which residents of such area may also be exempted from the ban, and for a system (whether by notification to the enforcement authorities, or otherwise) for also exempting bona fide visitors to residents of such areas from the ban.

(ii) The precise resources that will be devoted to enforcing this measure, the method of enforcement to be used (for example, chalking tires), and the penalties for violation. The compliance schedule shall at a minimum provide that violators shall be subject to a $10.00 fine.

(f) With respect to the measure for elimination of free employee parking approved in § 52.1073:

(1) For purposes of this paragraph "Commercial Parking Rate" shall mean the average daily rate charged by the three operators of parking facilities containing 25 or more commercial parking spaces that are closest in location to any employee parking space affected by this paragraph.

(2) The State of Maryland shall, no later than June 30, 1974, submit to the Administrator for his approval a precise description of areas within the State which are at that time adequately served by mass transit, and those areas which in the judgment of the State will be adequately served by mass transit by June 30, 1975. The documentation and policy assumptions used to select these areas shall be included with this submission.

(3) The State of Maryland shall by June 30, 1975, and each succeeding year, submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the State can affirmatively demonstrate that no additional areas can be included.

(4) Each political subdivision of the State of Maryland which has jurisdiction over any area designated as adequately served by mass transit shall, no later than October 1, 1974, submit to the Administrator legally adopted regulations instituting commercial parking rates by June 30, 1975, on all employers, public (excluding federal government) or private, with 25 or more employee spaces located in those areas adequately served by mass transit within the Maryland portion of the National Capital Interstate AQCR. Any handicapped person who is unable to use mass transit shall not be subject

to the commercial parking rate. The commercial parking rate shall not apply to employee parking begun between the hours of 6 p.m. and 2 a.m.

(g) With respect to the measure for increased bus fleet and service approved in § 52.1073: The State of Maryland shall no later than January 31, 1974, submit a compliance schedule to put the program into effect. The compliance schedule shall, at a minimum, provide that the State of Maryland shall, on or before March 1, 1974, submit to the Administrator a statement, signed both by a representative of the State of Maryland, and by a representative of the Washington Metropolitan Area Transit Authority (WMATA) indicating that, in the judgment of both of them. financial commitments have been made by the State of Maryland or by its local governments for the purchase of buses. This statement, when taken in conjunction with the commitments made by the District of Columbia and the Commonwealth of Virginia, must be sufficient to enable WMATA to purchase in the fiscal year beginning the next July 1 the number of buses indicated below:

Fiscal Year 1975—175 buses
Fiscal Year 1976—150 buses
Fiscal Year 1977—150 buses

The statement shall also indicate that WMATA has in fact committed to purchase that number of buses.

(h) With respect to the express bus lane measure approved in § 52.1073:

(1) The State of Maryland shall no later than January 1, 1975, establish exclusive bus lanes in the following corridors:

(i) U.S. Route 50 from New Carrollton to the Maryland-District of Columbia boundary.

(ii) Pennsylvania Avenue and Maryland Route 4 from Andrews Air Force Base to the Maryland-District of Columbia boundary.

(iii) U.S. Route 240 from Old Georgetown Road to the Maryland-District of Columbia boundary.

(iv) New Hampshire Avenue from U.S. Route 29 to the Maryland-District of Columbia boundary.

Such lanes shall be inbound during the morning peak and outbound during the evening peak periods.

(2) The State of Maryland shall submit to the Administrator, no later than March 1, 1974, a schedule showing the steps which it will take to establish exclusive bus lanes in those corridors enumerated in paragraph (h) (1) of this section. Each schedule shall be subject to approval by the Administrator and shall include as a minimum the following:

(i) Identification of streets or highways that shall have portions designated for exclusive bus lanes.

(ii) The date by which each street or highway shall be designated.

(3) Exclusive bus lanes must be prominently indicated by distinctively painted lines, pylons, overhead signs, or physical barriers.

(4) Application for substitution of a corridor for any of those listed in paragraph (h) (1) of this section shall be made by the State of Maryland for the Administrator's approval no later than March 1, 1974.

§ 52.1080 [Corrected]

9. Section 52.1080, "Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons)," as promulgated on June 22, 1973, (38 FR 16566), is corrected by renumbering it as § 52.1081, and is revised to read as follows:

§ 52.1081 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) With respect to the transportation control plan for the National Capital region submitted by the State, the requirements of § 51.14(a) (1) and (2) of this Chapter are not met because there are no proposed regulations, nor an adequate description of enforcement and administrative procedures for the strategies for express bus lanes, increased bus fleet and service, elimination of

free on-street commuter parking, and elimination of free parking by employers.

(b) The requirements of § 51.14(c) of this chapter are not met with respect to the transportation control plans for the National Capital region because the strategies were not defined well enough to insure the claimed and required emission reductions. Inadequate technical justification was provided for the claimed reductions in aircraft emissions and no strategies were provided for these reductions.

10. Section 52.1082 is added to read as follows:

§ 52.1082 Rules and regulations.

(a) The requirements of § 51.22 of this chapter are not met for the National Capital Interstate Region because regulations necessary to implement proposed stationary control measures for gas handling and dry cleaning losses have not been adopted. Substitute regulations are promulgated in §§ 52.1086, 52.1087, and 52.1088.

11. Section 52.1084 is revised to read as follows:

§ 52.1084 Intergovernmental cooperation.

(a) The requirements of § 51.21 of this chapter are not met because local agencies and their responsibilities in carrying out transportation control measures are not adequately identified.

12. Sections 52.1085 through 52.1094 are added to read as follows:

§ 52.1085 Federal parking facilities.

(a) Definitions. For the purposes of this section:

(1) "Administrative Officer" means the Administrator of General Services, the Marshal of the Supreme Court of the United States, the Architect of the Capitol, and any other representative of a Federal Government entity designated as such for the purposes of this section by the Administrator.

(2) "Commercial value" means a value which approximates commercial charges for space and services for like

facilities in the immediate vicinity of a Federal facility. In the absence of commercial facilities, commercial value should be established using the fair market value of a Federal facility and the cost of services being provided as a basis.

(3) "Designated area" means an area defined by § 52.1080(d)(1).

(4) "Federal Government entity" means a Federal department, agency, bureau, board, office, commission, district, or an instrumentality of the executive legislative, and judicial branches of the Federal Government. Foreign embassies are not subject to this regulation.

(5) "Parking facility" (also called "facility") means any lot, garage, building or structure, or any combination or portion thereof, in or on which motor vehicles are temporarily parked.

(6) "Residential parking space" means any parking space used primarily for the parking of vehicles of persons residing within one-half mile of the space.

(b) This section shall be applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) Commencing July 1, 1975, rates based upon the commercial value shall be charged employees for parking a motor vehicle in any facility which is owned, operated, leased or otherwise controlled by any Federal Government entity and which is located in a designated area; provided, however, that such commercial value shall not apply (1) to parking begun between the hours of 6 p.m. and 2 a.m., (2) to residential parking spaces contained in or on the facility, (3) to vehicles owned or leased by the Federal Government, and (4) to any vehicle exempted under paragraph (d)(2) of this section.

(d)(1) Each Administrative Officer shall adopt a plan which shall require each Federal Government entity under his authority to which this section applies to implement paragraph (c) of this section.

(2) The plan may provide for exemption from the requirements of paragraph (c) of this section for space

assigned to handicapped persons who are physically unable to use mass transit.

(3) The Administrator of the Environmental Protection Agency will promulgate such a plan by May 1, 1974, for any parking facility of any Federal Government entity to which this section applies which is not under the authority of an Administrative Officer. Any such Federal Government entity may apply to the Administrator before January 4, 1974, for designation of an "Administrative Officer" and permission to submit its own plan.

(4) Each Administrative Officer shall submit to EPA, no later than July 1, 1974, an outline of the plan required by this paragraph, and the effective date of the plan, which date shall be no later than July 1, 1975. The plan required by this paragraph covering all subject facilities of government entities which are part of the executive branch of the Federal Government shall be coordinated with the Administrator of General Services.

§ 52.1086 Gasoline transfer vapor control.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Maryland portion of the National Capital Interstate AQCR.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight or organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily adapted to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.1087 of this chapter.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of 1,000 gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Every owner or operator of a stationary storage container or delivery vessel subject to this section shall comply with the following compliance schedule:

(1) April 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) May 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) February 1, 1976—Complete on-site construction or installation of emission control equipment.

(5) March 1, 1976—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after March 1, 1976. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by March 1, 1976, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after March 1, 1976, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.1087 Control of evaporative losses from the filling of vehicular tanks.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Maryland portion of the National Capital Interstate AQCR.

(c) A person shall not transfer gasoline to an automotive fuel tank from a gasoline dispensing system unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section may consist of a vapor-tight return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, refrigeration-condensation system or its equivalent.

(e) Components of the systems required by § 52.1086 may be used for compliance with paragraph (c) of this section.

(f) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the

provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing and using in the most effective manner a system required by paragraph (c) of this section.

(g) Every owner or operator of a gasoline dispensing system subject to this section shall comply with the following compliance schedule.

(1) February 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) June 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) May 1, 1977—Complete on-site construction installation of emission control equipment or process modification.

(5) May 31, 1977—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1977. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(j) Any gasoline dispensing facility subject to this section which installs a gasoline dispensing system after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (g) of this section as far as possible. Any facility subject to this section which installs a gasoline dispensing system after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.1088 Control of dry cleaning solvent evaporation.

(a) Definitions:

(1) "Dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(2) "Organic solvents" means organic materials, including diluents and thinners, which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(3) "Photochemically reactive solvent" means any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds

classified below or which exceeds any of the following individual percentage composition limitations, as applied to the total volume of solvent.

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenyenl: 8 percent;

(iii) A combination of ethylbenyene or ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

(b) This section is applicable to the Maryland portion of the National Capital Intrastate AQCR.

(c) No person shall operate a dry cleaning operation using other than perchloroethylene, 1,1,1-trichloroethane, or saturated halogenated hydrocarbons unless the uncontrolled organic emissions from such operation are reduced at least 85 percent; provided, that dry cleaning operations emitting less than 8 pounds per hour and less than 40 pounds per day of uncontrolled organic materials are exempt from the requirement of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic emissions being incinerated must be oxidized to carbon dioxide.

(e) Any owner or operator of a source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents no later than January 31, 1974, or by controlling emissions as required by paragraphs (c) and (d) of this section no later than May 31, 1975.

§ 52.1089 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles that need emission control-related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with the meanings so defined.

(b) This section is applicable within the Maryland portion of the National Capital Interstate AQCR.

(c) The State of Maryland shall establish an inspection and maintenance program applicable to all light-duty, medium-duty, and heavy-duty vehicles registered in the area specified in paragraph (b) of this section that operate on public streets or highways over which it has ownership or control. The State may exempt any class or category of vehicles that the State finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty, medium-duty, and heavy-duty motor vehicles at periodic intervals no more than 1 year apart by means of a loaded emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators

to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After July 31, 1976, the State shall not register or allow to operate on public streets or highways any light-duty, medium-duty, or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After July 31, 1976, no owner of a light-duty, medium-duty, or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The State of Maryland shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposals and regulations that it will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

§ 52.1090 Bicycle lanes and bicycle storage facilities.

(a) Definitions:

(1) "Bicycle" means a two-wheel, non-motor powered vehicle.

(2) "Bicycle lane" means a route for the exclusive use of bicycles, either constructed specifically for that purpose or converted from an existing lane.

(3) "Bicycle parking facility" means any storage facility for bicycles, which allows bicycles to be locked securely.

(4) "Parking space" means the area allocated by a parking facility for the temporary storage of one automobile.

(5) "Parking facility" means a lot, garage, building, or portion thereof, in or on which motor vehicles are temporarily parked.

(b) This section shall be applicable in the State of Maryland portion of the National Capital Interstate Air Quality Control Region.

(c) On or before July 1, 1976, the State of Maryland shall establish a network of bicycle lanes linking residential areas with employment, educational, and commercial centers in accordance with the following requirements:

(1) The network shall contain no less than 60 miles of bicycle lanes in addition to any in existence as of November 20, 1973.

(2) Each bicycle lane shall at a minimum:

(i) Be clearly marked by signs indicating that the lane is for the exclusive use of bicycles (and pedestrians, if necessary);

(ii) Be separated from motor vehicle traffic by appropriate devices, such as physical barriers, pylons, or painted lanes;

(iii) Be regularly maintained and repaired;

(iv) Be of a hard, smooth surface suitable for bicycles;
(v) Be at least 5 feet wide for one-way traffic, or 8 feet wide for two-way traffic;
(vi) If in a street used by motor vehicles, be a minimum of 8 feet wide whether one-way or two-way; and
(vii) Be adequately lighted.

(3) Off-street bicycle lanes which are not reasonably suited for commuting to and from employment, educational, and commercial centers shall not be considered a part of this network.

(4) On or before October 1, 1974, the State of Maryland shall establish 25 percent of the total mileage of the bicycle lane network; on or before June 1, 1975, 50 percent of the total mileage shall be established; on or before July 1, 1976, 100 percent of the total mileage shall be established.

(d) On or before June 1, 1974, the State of Maryland shall submit to the Administrator a comprehensive study of a bicycle lane and bicycle path network. The study shall include, but not be limited to the following:

(1) A bicycle user and potential user survey, which shall at a minimum determine:

(i) For present bicycle riders, the origin, destination, frequency, travel time, and distance of bicycle trips;
(ii) In high density employment areas, the present modes of transportation of employees and the potential modes of transportation, including the number of employees who would convert to the bicycle mode from other modes upon completion of the bicycle lane network described in paragraph (c) of this section.

(2) A determination of the feasibility and location of on-street bicycle lanes.

(3) A determination of the feasibility and location of off-street lanes.

(4) A determination of the special problems related to feeder lanes to bridges, on-bridge lanes, feeder lanes to METRO and railroad stations, and feeder lanes to fringe parking areas, and the means necessary to include such lanes in the bicycle lane network described in paragraph (c) of this section.

(5) A determination of the feasibility and location of various methods of safe bicycle parking.

(6) The study shall make provision for the receipt of public comments on any matter within the scope of the study, including the location of the bicycle lane network described in paragraph (c) of this section.

(e) By June 1, 1974, in addition to the comprehensive study required pursuant to paragraph (d) of this section, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish this network pursuant to paragraphs (c) and (g) of this section. The compliance schedule shall identify in detail the names of streets that will provide bicycle lanes and the location of any lanes to be constructed especially for bicycle use. It shall also include a statement indicating the source, amount, and adequacy of funds to be used in implementing this section, and the text of any needed statutory proposals and needed regulations which will be proposed for adoption.

(f) On or before October 1, 1974, the State of Maryland shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

(g) On or before June 1, 1975, the State of Maryland shall require all owners and operators of parking facilities (including both free and commercial facilities) within the area specified in paragraph (b) of this section to provide spaces for the storage of bicycles in the following ratio: one automobile-sized parking space (with a bicycle parking facility) for the storage of bicycles for every 75 parking spaces for the storage of autos.

(1) Bicycle parking facilities shall be so located as to be safe from motor vehicle traffic and secure from theft. They shall be properly repaired and maintained.

(2) The METRO Subway System shall provide a sufficient number of safe and secure bicycle parking facilities at each station to meet the needs of its riders.

(3) All parking facilities owned, operated, or leased by the Federal Government shall be subject to this paragraph.

(4) Any owner or operator of a parking facility which charges a fee for the storage of motor vehicles shall store bicycles at a price per unit per hour which is no greater in relation to the cost of storing them than is the price of parking for a motor vehicle in relation to the cost of storing it. Unless the owner or operator makes an affirmative showing to the State of Maryland of different facts, and agrees to charge in conformity with that showing, the ratio in costs and prices shall be determined by the maximum number of bicycles that can be stored in a single standard-sized automobile parking space.

§ 52.1091 Medium-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/Fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbons and carbon monoxide from 1973 and earlier medium-duty vehicles of at least 15 and 30 percent, respectively.

(2) "Medium-duty vehicle" means a gasoline powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Maryland portion of the National Capital Interstate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1976, all medium-duty vehicles of model years prior to 1973 which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52.1093 of this chapter, which are registered in the area specified in paragraph (b) of this section, are equipped with an appropriate air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an air/fuel control device. No later than

February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1976.

(4) A provision that no later than May 31, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1089 unless it has been first equipped with an approved air/fuel control device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those persons installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device

installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1976, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implemented by this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control devices or other devices approved pursuant to this section are not commercially available.

§ 52.1092 Heavy-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/Fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from heavy-duty vehicles of at least 30 and 40 percent, respectively.

(2) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 lb gross vehicle weight (GVW) or more.

(3) All other terms used in this section, that are defined in Part 51, Appendix N, are used herein with meanings so defined.

(b) This section is applicable within the Maryland portion of the National Capital Interstate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, all heavy-duty vehicles registered in the areas specified in paragraph (b) of this section are equipped with an appropriate air/fuel control retrofit or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an air/fuel control retrofit. No later than April 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the device on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1089 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability

to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control retrofits or other devices approved pursuant to this section are not commercially available.

§ 52.1093 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device that uses a catalyst installed in the exhaust system of a vehicle (and if necessary includes an air pump) so as to achieve a reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 50 and 50 percent, respectively, 1975 model years, and of at least 50 and 50 percent, respectively, from medium duty vehicles of 1971 through 1975 model years.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty truck" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Fleet vehicle" means any of 5 or more light duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light duty vehicle-for-hire) owned by any individual or business.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Maryland portion of the National Capital Interstate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, all light-duty fleet vehicles of model years 1971 through 1975, and all medium-duty vehicles of model years 1971 through 1975 which are registered in the area specified in paragraph (b) of this section and are able to operate on 91 RON gasoline are equipped with an appropriate oxidizing catalyst retrofit device, or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an oxidizing catalyst retrofit device. No later than April 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such data shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and for completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1089 unless it has been first equipped with an approved oxidizing catalyst device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation, or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) Any vehicle which is manufactured equipped with an oxidizing catalyst, or which is certified to meet the original 1975 light duty vehicle emissions standards set forth in section 202(b)(1)(a) of the Clean Air Act of 1970 (without regard to any suspension of such standards), shall be exempt from the requirements of this section.

§ 52.1094 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) "Vacuum spark advance disconnect retrofit" means a device or system installed on a motor vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed, so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1967 and earlier light-duty vehicles of at least 25 and 9 percent, respectively.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Maryland portion of the National Capital Interstate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before January 1, 1976, all light-duty vehicles of model years prior to 1968 registered in the area specified in paragraph (b) of this section are equipped with an appropriate vacuum spark advance disconnect retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as a vacuum spark advance disconnect retrofit. No later than February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve de-

vices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d) (3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than January 1, 1976.

(4) A provision that starting no later than January 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for § 52.1089 unless it has been first equipped with an approved vacuum spark advance disconnect retrofit device or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After January 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation

of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that vacuum spark advance disconnect devices or other devices approved pursuant to this section are not commercially available.

Subpart VV of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. In § 52.2420, paragraph (c) is revised to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

(1) May 4, 1972, by the Virginia Air Pollution Control Board;

(2) April 11, May 30, July 9, and July 11, 1973.

2. In § 52.2422, the first paragraph is labeled as "(a)" and paragraph (b) is added to read as follows:

§ 52.2422 Extensions.

* * * * *

(b) The Administrator hereby extends for two years the attainment dates for the national standards for carbon monoxide and photochemical oxidants in the Virginia portion of the National Capital Interstate Region.

3. Section 52.2423 is revised to read as follows:

§ 52.2423 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Virginia's plan for the attainment and maintenance of the national standards.

(b) With respect to the transportation control strategies submitted on April 11, May 30, July 9, and July 11, 1973, the Administrator approves the measures for the National Capital region for carpool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking, elimination of free parking by private employers, parking surcharge, inspection of vehicles, dry cleaning solvent use, and gasoline vapor recovery, with the exceptions set forth in §§ 52.2424, 52.2427, 52.2430, 52.2431, 52.2435, and 52.2436. Rectifying provisions are promulgated in this subpart.

§ 52.2424 [Amended]

4. In § 52.2424, paragraph (b) is corrected by inserting the word "sufficient" before the words "interim control measures."

5. In § 52.2427, paragraphs (a) and (b) are labeled as "reserved," paragraph (c) is amended by adding the following sentence at the end of the paragraph, and paragraph (d) is added to read as follows:

§ 52.2427 Source surveillance.

(a) [Reserved]

(b) [Reserved]

(c) * * * Rectifying provisions are promulgated in this section.

(d) *Monitoring transportation sources.* (1) This section is applicable to the Commonwealth of Virginia.

(2) In order to assure the effectiveness of the inspection and maintenance program approved in § 52.2423 and required by § 52.2441, and the retrofit devices required under §§ 52.2444, 52.2445, 52.2446, and 52.2447 the Commonwealth shall monitor the actual per-vehicle emissions reductions occurring as a result of such measures. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the Commonwealth of Virginia in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period January 1 to March 31, 1976.

(3) In order to assure the effective implementation of the car pool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking, elimination of free employee parking, and the parking surcharge approved in § 52.2423, the Commonwealth shall monitor vehicle miles traveled and average vehicle speeds for each area in which such sections are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. All data obtained from such monitoring shall be included in the quarterly report submitted to the Administrator by the Commonwealth of Virginia in accordance with § 51.7 of this chapter. The first quarterly report shall cover the period from July 1 to September 30, 1974. The vehicle miles traveled and vehicle speed data shall be collected on a monthly basis and submitted in a format similar to Table 1.

TABLE 1

Time period Affected area	Roadway type	VMT or average vehicle speed	
		Vehicle type (1)	Vehicle type (2)[1]
Freeway			
Arterial			
Collector			
Local			

[1] Continue with other vehicle types as appropriate.

(4) No later than March 1, 1974, the Commonwealth shall submit to the administrator a compliance schedule to implement this section. The program description shall include the following:

(i) The agency or agencies responsible for conducting, overseeing, and maintaining the monitoring program.

(ii) The administrative procedures to be used.

(iii) A description of the methods to be used to collect the emission data, VMT data, and vehicle speed data; a description of the geographical area to which the data apply; identification of the location at which the data will be collected; and the time periods during which the data will be collected.

§ 52.2429 [Amended]

6. In § 52.2429, the attainment date table is amended by replacing the date "May 31, 1975" for attainment of the national standards for carbon monoxide and photochemical oxidants (hydrocarbons) in the National Capital Interstate region with the date "May 31, 1977."

7. Section 52.2430 is revised to read as follows:

§ 52.2430 Legal authority.

(a) The requirements of § 51.11(c) of this chapter are not fully met because the plan does not adequately identify or provide copies of all laws or regulations necessary for implementing the transportation control measures.

(b) The requirements of § 51.11(f) of this chapter are not fully met because it is not clearly demonstrated that all local agencies have requisite legal authority, or that the State retains responsibility for implementing the transportation control measures.

8. Section 52.2431 is revised to read as follows:

§ 52.2431 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14(a)(1)(b) and (c) of this chapter are not met because the approvable measures in the transportation control plan are not adequate to attain the national standards in the National Capital region. Inadequate technical justification was provided for the claimed reductions in aircraft emissions, and no strategies were provided for these reductions.

(b) The requirements of § 51.14(a)(2)(iii) of this chapter are not fully met with respect to the expansion of the bus fleet and service because of lack of detail or agreements which will result in the expansion.

(c) The requirements of § 51.14(a)(2)(iv) of this chapter are not fully met because of the lack of an adequate schedule for bus acquisitions, for elimination of employee free parking, and for elimination of free on-street commuter parking.

§ 52.2432 [Reserved]

9. Section 52.2432 is revoked and reserved.

§ 52.2434 [Reserved]

10. Section 52.2432 is revoked and reserved.

11. Section 52.2435 is added to read as follows:

§ 52.2435 Compliance schedules.

(a) The requirements of § 51.15 are not met for the measures for parking surcharge, elimination of free on-street commuter parking, elimination of free employee parking, increased bus fleet and service, and exclusive bus lanes. Provisions to implement the requirements of § 51.15 are promulgated in this section.

(b) With respect to the parking surcharge measure approved in § 52.2423:

(1) The Commonwealth of Virginia shall no later than June 30, 1974, submit to the Administrator for his approval a precise description of areas within the Virginia portion of the National Capital AQCR which are at that time adequately served by mass transit, and those areas which in the judgment of the Commonwealth will be adequately served by mass transit by June 30, 1975. The documentation and policy assumptions used to select these areas shall be included with this submission.

(2) The Commonwealth of Virginia shall by June 30, 1975, and each succeeding year submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the Commonwealth of Virginia can affirmatively demonstrate that no additional areas can be included.

(3) Each political subdivision of the Commonwealth of Virginia which has jurisdiction over any area (or portion thereof) designated as adequately served by mass transit shall, no later than October 1, 1974, submit to the Administrator legally adopted regulations instituting the parking surcharge on all long term (6 hour) parking in all commercial parking facilities (except to the extent they are used for residential parking) and all facilities subject to §§ 52.2435(d) and 52.2437 in those areas adequately served by mass transit within the control of each such political subdivision. The parking surcharge shall be implemented and collected according to the following schedule:

June 30, 1975-Dec. 31, 1975	$0.50
January 1, 1976-June 30, 1976	1.00
July 1, 1976-Dec. 31, 1976	1.50
January 1, 1977	2.00

All monies collected under this program shall be turned over to the appropriate political subdivision. All proceeds from this program shall be used for the expansion and operation of mass transit. Any handicapped person who is unable to use mass transit shall not be subject to the surcharge. The parking surcharge shall not apply to any parking begun between the hours of 6 p.m. and 2 a.m.

(c) With respect to the measure for elimination of free on-street commuter parking approved in § 52.2423:

(1) Each potential subdivision of the Commonwealth of Virginia within the National Capital AQCR shall, no later than June 30, 1974, submit to the Administrator for his approval a compliance schedule, including legally adopted regulations, enforcement procedures, and a description of resources available. The compliance schedule shall provide:

(i) For implementing the on-street parking ban in all areas within which a surcharge will be required by paragraph (b) of this section. This program shall prohibit all

parking for more than two hours by non-residents of the area subject to the ban during the hours from 7 a.m. to 7 p.m. Monday through Friday (excepting holidays) on any street within such areas. The program shall also provide for a sticker system, under which residents of such area may also be exempted from the ban, and for a system (whether by notification to the enforcement authorities, or otherwise) for also exempting bona fide visitors to residents of such areas from the ban.

(ii) The precise resources that will be devoted to enforcing this measure, the method of enforcement to be used (for example, chalking tires), and the penalties for violation. The compliance schedule shall at a minimum provide that violators shall be subject to a $10.00 fine.

(d) With respect to the measure for elimination of free employee parking approved in § 52.2423:

(1) For purposes of this paragraph "Commercial Parking Rate" shall mean the average daily rate charged by the three operators of parking facilities containing 25 or more commercial parking spaces that are closest in location to any employee parking space affected by this paragraph.

(2) The Commonwealth of Virginia shall, no later than June 30, 1974, submit to the Administrator for his approval a precise description of areas within the Commonwealth of Virginia which are at that time adequately served by mass transit, and those areas which in the judgment of the Commonwealth of Virginia will be adequately served by mass transit by June 30, 1975. The documentation and policy assumptions used to select these areas shall be included with this submission.

(3) The Commonwealth of Virginia shall by June 30, 1975, and each succeeding year, submit to the Administrator for his approval a revised list of those areas which are adequately served by mass transit. Additional areas must be included as mass transit service is increased, unless the Commonwealth of Virginia can affirmatively demonstrate that no additional areas can be included.

(4) Each political subdivision of the Commonwealth of Virginia which has jurisdiction over any area desig-

nated as adequately served by mass transit shall, no later than October 1, 1974, submit to the Administrator legally adopted regulations instituting commercial parking rates by June 30, 1975, on all employers, public (excluding federal government) or private with 25 or more employee spaces located in those areas adequately served by mass transit within the Virginia portion of the National Capital Interstate AQCR. Any handicapped person who is unable to use mass transit shall not be subject to the commercial parking rate. The commercial parking rate shall not apply to any employee parking begun between the hours of 6 p.m. and 2 a.m.

(e) With respect to the measure for increased bus fleet and service approved in § 52.2423. The Commonwealth of Virginia shall no later than January 31, 1974, submit a compliance schedule to put the program in effect. The compliance schedule shall, at a minimum, provide that the Commonwealth of Virginia shall, on or before March 1, 1974, submit to the Administrator a statement, signed both by a representative of the Commonwealth of Virginia and by a representative of the Washington Metropolitan Area Transit Authority (WMATA) indicating that, in the judgment of both of them, financial commitments have been made by the Commonwealth of Virginia or by its local governments for the purchase of buses. This statement, when taken in conjunction with the commitments made by the District of Columbia and the State of Maryland, must be sufficient to enable WMATA to purchase in the fiscal year beginning the next July 1 the number of buses indicated below:

Fiscal Year 1975—175 buses

Fiscal Year 1976—150 buses

Fiscal Year 1977—150 buses

The statement shall also indicate that WMATA has in fact committed to purchase that number of buses.

(f) With respect to the express bus lane measure approved in § 52.2423:

(1) The Commonwealth of Virginia shall no later than January 1, 1975, establish exclusive bus lanes in the following corridors:

(i) George Washington Parkway—Washington Street —Jefferson Davis Highway from Fort Hunt to National Airport.

(ii) U.S. Route 50 from Seven Corners to the Virginia-District of Columbia boundary.

Such lanes shall be inbound during the morning peak period and outbound during the evening peak period.

(2) The Commonwealth of Virginia shall submit to the Administrator, no later than March 1, 1974, a schedule showing the steps which it will take to establish exclusive bus lanes in those corridors enumerated in paragraph (f) (1) of this section. Each schedule shall be subject to approval by the Administrator and shall include as a minimum the following:

(i) Identification of streets or highways that shall have portions designated for exclusive bus lanes.

(ii) The date by which each street or highway shall be designated.

(3) Exclusive bus lanes must be prominently indicated by distinctively painted lines, pylons, overhead signs, or physical barriers.

(4) Application for substitution of a corridor for any of those listed in paragraph (f) (1) of this section shall be made by the Commonwealth of Virginia for the Administrator's approval no later than March 1, 1974.

12. Section 52.2436 is added to read as follows:

§ 52.2436 Rules and regulations.

(a) The requirements of § 51.22 are not met because regulations have not been adopted and submitted for the stationary source measures aimed at reducing gasoline handling and dry cleaning losses. Substitute regulations are promulgated in §§ 52.2438, 52.2439, and 52.2440.

13. Sections 52.2437 through 52.2447 are added to read as follows:

§ 52.2437 Federal parking facilities.

(a) Definitions. For the purposes of this section,

(1) "Administrative Officer" means the Administrator of General Services, the Marshal of the Supreme Court of the United States, the Architect of the Capitol, and any other representative of a Federal Government entity designated as such for the purposes of this section by the Administrator.

(2) "Commercial value" means a value which approximates commercial charges for space and services for like facilities in the immediate vicinity of a Federal facility. In the absence of commercial facilities, commercial value should be established using the fair market value of a Federal facility and the cost of services being provided as a basis.

(3) "Designated area" means an area defined by § 52.2435(b)(1).

(4) "Federal Government entity" means a Federal department, agency, bureau, board, office, commission, district, or an instrumentality of the executive, legislative, and judicial branches of the Federal Government. Foreign embassies are not subject to this regulation.

(5) "Parking facility" (also called "facility") means any lot, garage, building or structure, or any combination or portion thereof, in or on which motor vehicles are temporarily parked.

(6) "Residential parking space" means any parking space used primarily for the parking of vehicles of persons residing within one-half mile of the space.

(b) This section shall be applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) Commencing July 1, 1975, rates based upon the commercial value shall be charged employees for parking a motor vehicle in any facility which is owned, operated, leased or otherwise controlled by any Federal Government entity and which is located in a designated area; provided, however, that such commercial value shall not apply (1) to parking begun between the hours of 6:00

p.m. and 2 a.m., (2) to residential parking spaces contained in or on the facility, (3) to vehicles owned or leased by the Federal Government, and (4) to any vehicle exempted under paragraph (d)(2) of this section.

(d)(1) Each Administrative Officer shall adopt a plan which shall require each Federal Government entity under his authority to which this section applies to implement paragraph (c) of this section.

(2) The plan may provide for exemption from the requirements of paragraph (c) of this section for space assigned to handicapped persons who are physically unable to use mass transit.

(3) The Administrator of the Environmental Protection Agency will promulgate such a plan by May 1, 1974, for any parking facility of any Federal Government entity to which this section applies which is not under the authority of an Administrative Officer. Any such Federal Government entity may apply to the Administrator before January 4, 1974, for designation of an "Administrative Officer" and permission to submit its own plan.

(4) Each Administrative Officer shall submit to EPA, no later than July 1, 1974, an outline of the plan required by this paragraph, and the effective date of the plan, which date shall be no later than July 1, 1975. The plan required by this paragraph covering all subject facilities of government entities which are part of the executive branch of the Federal Government shall be coordinated with the Administrator of General Services.

§ 52.2438 Gasoline transfer vapor control.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Virginia portion of the National Capital Interstate AQCR.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily adapted to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.2439.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with vapor recovery systems or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of one thousand gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Every owner or operator of a stationary storage container or delivery vessel subject to this section shall comply with the following compliance schedule:

(1) April 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) May 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) February 1, 1976—Complete on-site construction or installation of emission control equipment.

(5) March 1, 1976—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after March 1, 1976. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by March 1, 1976, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after March 1, 1976, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2438 Control of evaporative losses from the filling of vehicular tanks.

(a) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Virginia portion of the National Capital Interstate AQCR.

(c) A person shall not transfer gasoline to an automotive fuel tank from a gasoline dispensing system unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section may consist of a vapor-tight return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, refrigeration-condensation system or its equivalent.

(e) Components of the systems required by § 52.2439 may be used for compliance with paragraph (c) of this section.

(f) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing and using in the most effective manner a system required by paragraph (c) of this section.

(g) Every owner or operator of a gasoline dispensing system subject to this section shall comply with the following compliance schedule:

(1) February 1, 1974—Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) June 1, 1974—Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) January 1, 1975—Initiate on-site construction or installation of emission control equipment.

(4) May 1, 1977—complete on-site construction installation of emission control equipment or process modification.

(5) May 31, 1977—Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request what-

ever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1977. Any such schedule shall provide for certification to the Administrator, within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15 (b) and (c) of this chapter.

(j) Any gasoline dispensing facility subject to this section which installs a gasoline dispensing system after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (g) of this section as far as possible. Any facility subject to this section which installs a gasoline dispensing system after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.2440 Control of dry cleaning solvent evaporation.

(a) Definitions:

(1) "Dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(2) "Organic solvents" means organic materials, including diluents and thinners, which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(3) "Photochemically reactive solvent" means any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, as applied to the total volume of solvent.

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenyenl: 8 percent;

(iii) A combinaion of ethylbenyene or ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

(b) This section is applicable to the Virginia portion of the National Capital Interstate Region.

(c) No person shall operate a dry cleaning operation using other than perchloroethylene, 1,1,1-trichloroethane, or saturated halogenated hydrocarbons unless the uncontrolled organic emissions from such operation are reduced at least 85 percent; provided, that dry cleaning operations emitting less than 8 pounds per hour and less than 40 pounds per day of uncontrolled organic materials are exempt from the requirement of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic emissions being incinerated must be oxidized to carbon dioxide.

(e) Any owner or operator of a source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents no later than January 31, 1974, or by controlling emissions as required by paragraphs (c) and (d) of this section no later than May 31, 1975.

§ 52.2441 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles

through identifying vehicles that need emission control related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 lb GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, are used herein with the meanings so defined.

(b) This section is applicable within the Virginia portion of the National Capital Interstate AQCR.

(c) In connection with the light-duty vehicle inspection and maintenance program for the area specified in paragraph (b) of this section approved by the Administrator pursuant to § 52.2423, the Commonwealth of Virginia shall establish an inspection and maintenance program applicable to all medium-duty and heavy-duty vehicles registered in any area specified in paragraph (b) of this section that operate on public streets or highways over which it has ownership or control. The Commonwealth may exempt any class or category of vehicles that the Commonwealth finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the Commonwealth shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all medium-duty and heavy-duty motor vehicles at periodic intervals no more than 1 year apart by means of an idle emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive, within two weeks, the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair

facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle by January 1, 1975, and completing it by January 1, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After January 1, 1976, the Commonwealth shall not register or allow to operate on public streets or highways any medium-duty or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After January 1, 1976, no owner of a medium-duty or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The Commonwealth of Virginia shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposals and regulations that it will propose for adoption.

(2) The date by which the Commonwealth will recommend needed legislation to the legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

§ 52.2442 Bicycle lanes and bicycle storage facilities.

(a) Definitions:

(1) "Bicycle" means a two-wheel, non-motor powered vehicle.

(2) "Bicycle lane" means a route for the exclusive use of bicycles, either constructed specifically for that purpose or converted from an existing lane.

(3) "Bicycle parking facility" means any storage facility for bicycles, which allows bicycles to be locked securely.

(4) "Parking space" means the area allocated by a parking facility for the temporary storage of one automobile.

(5) "Parking facility" means a lot, garage, building, or portion thereof, in or on which motor vehicles are temporarily parked.

(b) This section shall be applicable in the Commonwealth of Virginia portion of the National Capital Interstate Air Quality Control Region.

(c) On or before July 1, 1976, the Commonwealth of Virginia shall establish a network of bicycle lanes linking residential areas with employment, educational, and commercial centers in accordance with the following requirements:

(1) The network shall contain no less than 60 miles of bicycle lanes in addition to any in existence as of November 20, 1973.

(2) Each bicycle lane shall at a minimum:

(i) Be clearly marked by signs indicating that the lane is for the exclusive use of bicycles (and pedestrians, if necessary);

(ii) Be separated from motor vehicle traffic by appropriate devices, such as physical barriers, pylons, or painted lines;

(iii) Be regularly maintained and repaired;

(iv) Be of a hard, smooth surface suitable for bicycles;

(v) Be at least 5 feet wide for one-way traffic, or 8 feet wide for two-way traffic;

(vi) If in a street used by motor vehicles, be a minimum of 8 feet wide whether one-way or two-way; and

(vii) Be adequately lighted.

(3) Off-street bicycle lanes which are not reasonably suited for commuting to and from employment, educational, and commercial centers shall not be considered a part of this network.

(4) On or before October 1, 1974, the Commonwealth of Virginia shall establish 25 percent of the total mileage of the bicycle lane network; on or before June 1, 1975, 50 percent of the total mileage shall be established; on or before July 1, 1976, 100 percent of the total mileage shall be established.

(d) On or before June 1, 1974, the Commonwealth of Virginia shall submit to the Administrator a comprehensive study of a bicycle lane and bicycle path network. The study shall include, but not be limited to the following:

(1) A bicycle user and potential user survey, which shall at a minimum determine:

(i) For present bicycle riders, the origin, destination, frequency, travel time, and distance of bicycle trips;

(ii) In high density employment areas, the present modes of transportation of employees and the potential modes of transportation, including the number of employees who would convert to the bicycle mode from other modes upon completion of the bicycle lane network described in paragraph (c) of this section.

(2) A determination of the feasibility and location of on-street bicycle lanes.

(3) A determination of the feasibility and location of off-street lanes.

(4) A determination of the special problems related to feeder lanes to bridges, on-bridge lanes, feeder lanes to METRO and railroad stations, and feeder lanes to fringe parking areas, and the means necessary to include such lanes in the bicycle lane network described in paragraph (c) of this section.

(5) A determination of the feasibility and location of various methods of safe bicycle parking.

(6) The study shall make provision for the receipt of public comments on any matter within the scope of the study, including the location of the bicycle lane network described in paragraph (c) of this section.

(e) By June 1, 1974, in addition to the comprehensive study required pursuant to paragraph (d) of this section, the Commonwealth of Virginia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish this network pursuant to paragraphs (c) and (g) of this section. The compliance schedule shall identify in detail the names of streets that will provide bicycle lanes and the location of any lanes to be constructed especially for bicycle use. It shall also include a statement indicating the source, amount, and adequacy of funds to be used in implementing this section, and the text of any needed statutory proposals and needed regulations which will be proposed for adoption.

(f) On or before October 1, 1974, the Commonwealth of Virginia shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

(g) On or before June 1, 1975, the Commonwealth of Virginia shall require all owners and operators of parking facilities containing more than 50 parking spaces (including both free and commercial facilities) within the area specified in paragraph (b) of this section to provide spaces for the storage of bicycles in the following ratio: one automobile-size parking space (with a bicycle parking facility) for the storage of bicycles for every 75 parking spaces for the storage of autos. The Commonwealth shall also require that:

(1) Bicycle parking facilities shall be so located as to be safe from motor vehicle traffic and secure from theft. They shall be properly repaired and maintained.

(2) The METRO Subway System shall provide a sufficient number of safe and secure bicycle parking facilities at each station to meet the needs of its riders.

(3) All parking facilities owned, operated, or leased by the Federal Government shall be subject to this paragraph.

(4) Any owner or operator of a parking facility which charges a fee for the storage of motor vehicles shall store bicycles at a price per unit per hour which is no greater in relation to the cost of storing them than is the price of parking for a motor vehicle in relation to the cost of storing it. Unless the owner or operator makes an affirmative showing to the Commonwealth of Virginia of different facts, and agrees to charge in conformity with that showing, the ratio in costs and prices shall be determined by the maximum number of bicycles that can be stored in a single standard-sized automobile parking space.

§ 52.2444 Medium duty air/fuel control retrofit.

(a) Defiintions:

(1) "Air/Fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air-fuel ratio so as to achieve reductions in exhaust emissions of hydrocarbon and carbon monoxide from 1973 and earlier medium-duty vehicles of at least 15 and 30 percent, respectively.

(2) "Medium-duty vehicle" means a gasoline powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Virginia portion of the National Capital Interstate AQCR.

(c) The Commonwealth of Virginia shall establish a retrofit program to ensure that on or before May 31, 1976, all medium-duty vehicles of model years prior to 1973 which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52.2446, which are registered in the area specified in paragraph (b) of this section, are equipped with an appropriate Air/Fuel Control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbon and carbon monoxide to the same extent as an air/fuel control device. No later than February 1, 1974, the Commonwealth of Virginia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the Commonwealth proposes for adoption. The compliance schedule shall also include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the Commonwealth shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d) (3) of this section are enforced.

(3) Provisions for beginning the installation of the devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1976.

(4) A provision that no later than May 31, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.2441 unless it has been first equipped with an approved air/fuel control device, or other device approved

pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those persons installing the retrofit device have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1976, the Commonwealth shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implemented by this section.

(g) The Commonwealth may exempt any class or category of vehicles from this section which the Commonwealth finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the Commonwealth demonstrates to the Administrator that air/fuel control devices or other devices approved pursuant to this section are not commercially available.

§ 52.2445 Heavy duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/Fuel Control Retrofit" means a system or device (such as modification to the engine's carburetor or positive crank case ventilation system) that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from heavy-duty vehicles of at least 30 and 40 percent, respectively.

(2) "Heavy duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 lb gross vehicle weight or more.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Virginia portion of the National Capital Interstate AQCR.

(c) The Commonwealth of Virginia shall establish a retrofit program to ensure that on or before May 31, 1977, all heavy duty vehicles registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an air/fuel control device. No later than April 1, 1974, the Commonwealth of Virginia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the Commonwealth proposes for adoption. The compliance schedule shall also include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the Commonwealth shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.2441 unless it has been first equipped with an approved air/fuel control device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(g) The Commonwealth may exempt any class or category of vehicles from this section which the Commonwealth finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the Commonwealth demonstrates to the Administrator that air/fuel control device or other devices approved pursuant to this section are not commercially available.

§ 52.2446 Oxidizing catalyst retrofit.

(a) Definitions:

(1) "Oxidizing catalyst" means a device that uses a catalyst installed in the exhaust system of a vehicle (and if necessary includes an air pump) so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 50 and 50 percent, respectively, from light duty vehicles of 1971 through 1975 model years, and of at least 50 and 50 percent, respectively, from medium duty vehicles of 1971 through 1975 model years.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Fleet vehicle" means any of 5 or more light-duty vehicles operated by the same person(s), business, or governmental entity and used principally in connection with the same or related occupations or uses. This definition shall also include any taxicab (or other light-duty vehicle-for-hire) owned by any individual or business.

(5) All other terms used in this section that are defined in Part 51, Appendix N, are used herein with meanings so defined.

(b) This section is applicable within the Virginia portion of the National Capital Interstate AQCR.

(c) The Commonwealth of Virginia shall establish a retrofit program to ensure that on or before May 31, 1977, all light-duty fleet vehicles of model years 1971 through 1975 and medium-duty vehicles of model years 1971 through 1975 which are registered in the area specified in paragraph (b) of this section and are able to operate on 91 RON gasoline, are equipped with an appropriate oxidizing catalyst retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an oxidizing catalyst retrofit device. No later than April 1, 1974, the Commonwealth of Virginia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the Commonwealth proposes for adoption. The compliance schedule shall also include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the Commonwealth shall submit legally adopted regulations to the Administrator establishing such a program. The regulation shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission test provided for by §§ 52.2423 and 52.2441 unless it has been first equipped with an approved oxidizing catalyst device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the Commonwealth shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) Any vehicle which is manufactured equipped with an oxidizing catalyst, or which is certified to meet the

original 1975 light-duty vehicle emission standards set forth in section 202(b)(1)(A) of the Clean Air Act of 1970 (without regard to any suspension of such standards), shall be exempt from the requirements of this section.

§ 52.2447 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) "Vacuum spark advance disconnect retrofit" means a device or system installed on a motor vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from 1967 and earlier light-duty vehicles of at least 25 and 9 percent, respectively.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, are used herein with meanings so defined.

(b) This section is applicable within the Virginia portion of the National Capital Interstate AQCR.

(c) The Commonwealth of Virginia shall establish a retrofit program to ensure that on or before January 1, 1976, all light-duty vehicles of model years prior to 1968 registered in the area specified in paragraph (b) of this section are equipped with an appropriate vacuum spark advance disconnect retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as a vacuum spark advance disconnect retrofit. No later than February 1, 1974, the Commonwealth of Virginia shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the Commonwealth proposes for adotpion. The compliance schedule shall also include a date by which the Commonwealth shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the Commonwealth shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of paragraph (d)(3) of this section are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than January 1, 1976.

(4) A provision that starting no later than January 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.2423 unless it has been first equipped with an approved vacuum spark advance disconnect retrofit device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation, or some other positive assurance that the device is installed and operating correctly.

(e) After January 1, 1976, the Commonwealth shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with

the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After January 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The Commonwealth may exempt any class or category of vehicles from this section which the Commonwealth finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the Commonwealth demonstrates to the Administrator that vacuum spark advance disconnect devices or other devices approved pursuant to this section are not commercially available.

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Baltimore, Maryland Transportation Control Plan

This rulemaking sets forth a transportation control plan for the Metropolitan Baltimore Intrastate Air Quality Control Region (AQCR). A general preamble was published on November 6, 1973, in the FEDERAL REGISTER (38 FR 30626) and is incorporated by reference herein.

BACKGROUND

On June 15, 1973, the Administrator disapproved in part the transportation control plan submitted on April 16, 1973 by the State of Maryland for attainment of primary national ambient air quality standards for carbon monoxide (CO), hydrocarbons (HC), oxides of nitrogen (NO_x), and photochemical oxidants (Ox) in the Metropolitan Baltimore Intrastate Region (38 FR 16550, June 22, 1973). Subsequent amendments to the plan were submitted to the Environmental Protection Agency (EPA) on June 15, 1973, June 28, 1973 and July 9, 1973. Although the plan and its amendments contained a number of generally acceptable strategies, the plan lacked adequate legal and technical assurances that the anticipated emissions reductions could be realized and the air quality standards in fact attained.

Maryland's request for a 2-year extension in attaining standards also was disapproved because it lacked adequate data to support a conclusion that strategies needed to attain standards by May 31, 1975 (or even by some later date up to May 31, 1977) are technically infeasible and also because the plan did not show adequate consid-

eration of available alternative strategies. On August 2, 1973 (38 FR 20769, August 2, 1973), the Administrator proposed regulations to supplement the strategies contained in the Maryland plan to bring it into conformance with requirements of the law, and also proposed added strategies to achieve further emission reductions needed to assure the attainment of standards. Those strategies and associated regulations which were proposed were gasoline handling vapor recovery, inspection and maintenance, bus/carpool computer matching system, management of parking supply, limitation of public parking, preferential bus/carpool treatment, vacuum spark advance disconnect, oxidizing catalyst retrofit, and gasoline distribution limitations.

A public hearing on the EPA plan was held in Baltimore, Maryland, on September 5, 1973. A total of 69 statements was presented during the hearing, and a total of 16 letters was received both before and after the hearings from private citizens, representatives of business, industry, and institutions, and spokesmen for environmental organizations. The control measures promulgated herewith reflect comments received in the letters and at the public hearing.

Air Pollution in the Metropolitan Baltimore Interstate AQCR

Natural features. The geographic area of the Metropolitan Baltimore Intrastate Air Quality Control Region is 2,364 square miles. The boundaries for the region conform to those of the Baltimore Standard Metropolitan Statistical Area. This includes the City of Baltimore and the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard. The region forms the western edge of the northern section of the Chesapeake Bay. The Blue Ridge and Allegheny Mountains lie westward of the region, providing a geographical basin in which pollution can be trapped. The region lies within the rolling Piedmont Plateau on the nearly flat Atlantic Coastal Plain. The eastern portion is generally flat, with elevations of

less than 500 feet; progressing westward across the region, the elevation gradually rises to the gently rolling areas of Carroll and Howard Counties; elevations in the western areas of the region reach 1,000 feet. The topography generally permits free air movement with few channeling effects.

Climatology. Baltimore is in an area where unusual meteorological conditions conducive to the accumulation of large quantities of pollutants in the atmosphere over the urban area can and do take place from time to time. Concentrations of atmospheric pollutants increase when the volume of air into which they are dispersed is decreased. In the atmosphere this occurs when the vertical extent to which mixing of the pollutants can take place is limited and the wind speed is low. When both these conditions occur in the extreme and emissions of air contaminants continue, concentrations of air pollutants can increase to the point that they become an immediate danger to human health.

Formation of photochemical oxidants will not take place unless strong sunlight is also present since an external source of energy is needed in the oxidant producing chemical reactions. Episodes of photochemical oxidants will then occur only when the three requirements of limited vertical mixing, light winds, and strong sunlight are all present.

The following pertinent data for the Baltimore area are given by Holzworth ("Mixing Heights, Wind Speeds, and Potential for Urban Air Pollution throughout the Contiguous United States," U.S. Environmental Protection Agency, 1971):

	650 meters
Mean annual morning mixing height	500 meters
	1400 meters
Mean summer morning mixing height	1800 meters
	5.5 m/s
Mean annual afternoon mixing height	4 m/s
	7 m/s
Mean summer afternoon mixing height	5.5 m/s

Mean annual wind speed in the morning mixing layer

Mean summer wind speed in the morning mixing layer

Mean annual wind speed in the afternoon mixing layer

Mean summer wind speed in the afternoon mixing layer

The above data indicate that Baltimore has a significant tendency to excess oxidant formation during the summer months, although that tendency is not as great as in some other areas of the country. In the 5-year period starting August 1, 1960, there were 20 days of high meteorological potential for air pollution as defined by the National Weather Bureau. This compares to a high of 40 days in the Eastern half of the United States, and 70 in the Western half of the country. There were some parts of the country where there were no days of high pollution potential. The relatively high emission levels of carbon monoxide and hydrocarbons in the Baltimore area, particularly attributable to vehicular traffic, have aggravated the air quality problem, especially during those days of high meteorological potential for pollution.

In order to assist the air pollution control program for the region, an Environmental Meterological Support Unit (EMSU) is stationed in Washington, D.C. by the National Weather Service. The EMSU has the responsibility for forecasting high pollution potential days, or as they are now known, Air Stagnation Advisories for the Baltimore area. Since January 1970, significant air stagnation has been forecast on 72 days, or an average of 19 days per year. Of these 72 days, 36 days, or one half of the total, were in the months of June, July, and August when photochemical oxidants are most likely to be a problem. Actual records of air quality measurements in the region clearly show the high frequency with which standards are exceeded during the summer months.

Air quality and reduction. The State of Maryland, in its transportation control plan submission of June 15, 1973, included a maximum validated 8-hour average carbon monoxide reading of 21 ppm. After verifying with the Maryland Bureau of Air Quality Control that this level had occurred on two separate occasions (August 5 and 6, 1971), the Administrator determined it to be the Baltimore air quality level for this pollutant upon which the control strategy may be based. Similarly, a maximum validated 1-hour average photochemical oxidant reading of 0.21 ppm was verified to have occurred several times (on August 20, 1972) and, therefore is the Baltimore air quality level for this pollutant upon which the control strategy may be based.

According to the Maryland plan, total carbon monoxide emissions in the area defined in the Baltimore Metropolitan Area Transportation Study, known as the BMATS area, were 507,800 tons in 1972. (For a definition of this area, see "Transportation Controls to Reduce Motor Vehicle Emissions in Baltimore, Maryland," EPA Report APTD-1443, p II-27). Total daily peak-period emissions (6-9 am) of hydrocarbons in the BMATS area were 57.7 tons in 1972. Based on more accurate emission and deterioration factors for mobile sources, as presented in "An Interim Report on Motor Vehicle Emission Estimation," by D. S. Kircher and D. P. Armstrong, EPA calculations indicate baseline emission inventories of 592.737 tons per year and 61.0 tons per peak period, for carbon monoxide and hydrocarbons, respectively. The rationale for the use of the peak-period hydrocarbon emissions is presented at the end of this section of the preamble.

On the basis of the foregoing emission data baseline, the EPA calculates that a carbon monoxide emissions reduction of 337,860 tons from 592,737 tons in 1972 to 254,877 tons using the rollback technique, (See "Technical Support Document for the Transportation Control Plan for the Metropolitan Baltimore Intrastate Region," EPA, Region III) is necessary in the BMATS area to meet the national ambient air quality standard for that pollutant. Based on EPA calculations using 40 CFR Part

51, Appendix J, the peak period hydrocarbon emissions must be reduced by 70 percent of the 1972 emissions in the BMATS area from a level of 61.0 tons to a level of 18.3 tons. Since significantly greater emission reductions are required for hydrocarbons, the control measures proposed to attain the oxidant standard will be more than sufficient to attain the carbon monoxide standard.

Hydrocarbon emission concentrations during the 6-9 am period are related to peak oxidant readings in the afternoon, after mixing with nitrogen oxides in the presence of strong sunlight. Since emissions of hydrocarbons vary considerably during the day, the rush hours account for a disproportionate amount of emissions due to the significance of the contribution of motor vehicles. Hence, the hydrocarbon emission inventories and strategy effects were determined for this peak period. Justification for this rationale is provided by the fact that the conversion curve (40 CFR Part 51, Appendix J) establishes the relationship between peak 6 to 9 am hydrocarbon emissions and the maximum formation of oxidants. To ensure against reducing only peak period emissions and allowing emissions at other times, most of the strategies have the effect of reducing emissions throughout the day. The peak period was used to calculate the effectiveness of the strategy on the peak period emissions.

The stationary source controls which are presented in Table 2 reflect on-going state programs for control of stationary source emissions. These controls consist of: (1) Enforcement of current regulations, (2) adoption of stationary source rules limiting the construction of new sources of hydrocarbon emissions, (3) recovery of vapors from gas-handling, and (4) reductions in dry cleaning and other organic solvent losses.

State Transportation Control Plan

The State of Maryland Plan for the Metropolitan Baltimore Intrastate Region contained five basic strategies and one episode strategy. These were: (1) Federal Motor Vehicle Control Program (FMVCP), (2) additional stationary source controls, (3) the Periodic Motor Vehicle Inspection Program, (4) catalytic retrofit of heavy duty vehicles, (5) improved public transportation, and (6) vehicle use restrictions during predicted stagnations in the summer months. Except for the FMVCP, the strategies, as proposed by the Bureau of Air Quality Control, were evaluated in order to determine whether they were adequate to attain standards. (See 38 FR 16550, June 22, 1973, and "Evaluation Report for the State of Maryland (Metropolitan Baltimore.")

A brief summary of these strategies and their evaluation is given in the following paragraphs:

The stationary source controls include: (a) Gasoline handling emissions control, both on the station storage tanks and on the gasoline pumps, (b) dry cleaning solvents control and (c) emissions frozen at current levels.

The Maryland Plan included proposed regulations for the installation of vapor balance lines or equally effective vapor discharge control systems on all motor vehicle fuel loading systems. The plan states a 90 percent hydrocarbon emissions reduction will be achieved for all gasoline service station losses, although the proposed regulations (since adopted by Maryland) do not ensure that this reduction will, in fact, occur. Therefore, the Administrator considered it necessary to propose and to promulgate measures which require the installation of vapor recovery devices which are 90 percent effective, on both the loading facilities for service station storage tanks and at the gasoline pumps.

The Maryland Plan included a proposed regulation which would accelerate to May 31, 1973, the use of non-photochemically reactive hydrocarbons in dry cleaning operations. As stated in the Federal Register (38 FR 20769), the Administrator approves this concept and recognizes that Maryland is proceeding expeditiously to promulgate such a regulation in final form.

Also included in the Maryland Plan were two measures designed to prevent additional hydrocarbon emissions from major sources. The first element, would require the reduction of hydrocarbon emissions from all existing

stationary sources to a level equal to full control under current regulations and the subsequent maintenance of total emissions at that level.

The Maryland Plan also proposed to prohibit new major hydrocarbon sources from moving into the Region. Although no specific regulations had been adopted or proposed by Maryland for these measures, the Administrator had determined that emission reductions claimed were technically proper and that legal authority exists to impose the freeze. A regulation is being promulgated to assure its implementation.

Mobile source controls proposed by the State of Maryland included the Periodic Motor Vehicle Inspection (PMVI) program and the installation of catalytic retrofit devices on all heavy duty vehicles.

The PMVI program which was proposed included a dynamic (loaded) emissions inspection program for both light and heavy duty vehicles. The proposed program specifies a state-administered program with 87 inspection lanes (43 in the Metropolitan Baltimore Region), and requires the design of failure criteria such that a reduction of 12 percent hydrocarbon and 10 percent carbon monoxide emissions will result. However, since neither the legal authority nor a detailed description of the proposed regulations was submitted with the plan, the Administrator considered it necessary to propose and to promulgate a region-wide inspection/maintenance program.

The Maryland plan included a proposal for the retrofit of medium and heavy duty vehicles with 50 percent effective catalytic retrofits. Since no legal authority was demonstrated, nor regulations included; nor test data provided to confirm the proposed reductions; nor any intergovernmental arrangements with New York City which had initiated a similar program primarily directed towards control of carbon monoxide, whereas Maryland was primarily seeking a hydrocarbon control program; the Administrator was obliged to disapprove this proposed strategy. A regulation for catalytic retrofit of medium duty vehicles is promulgated herewith. EPA believes, as more fully described below, that catalytic retrofit of heavy duty vehicles is not feasible at this time. Accordingly, a different retrofit program for these vehicles is promulgated herewith.

The Maryland plan contained a transportation control package consisting of proposals for traffic flow improvements and VMT reduction measures. To facilitate traffic flow a TOPICS [1]-type program was proposed which calls for sophisticated signal controls, parking restrictions, lane widening, turn-lane additions and channelization projects. Since the projects included in this plan are expected to expedite traffic flow overall by about 10 percent, it is anticipated that emission reductions will result. The VMT reduction measures proposed included establishment of express bus-lanes, purchase of additional buses, and promotion of carpools. The plan claimed a 13 percent reduction in VMT for the transportation control package although it also stated that a 75 percent to 85 percent reduction in emissions attributable to a reduction in VMT would be needed to attain standards by 1977. In any event, the proposals were not accompanied by sufficient technical data, implementation schedules, and legal and regulatory authorities to ensure the claimed 13 percent reduction in VMT. Consequently, the Administrator considered it necessary to propose and promulgate bus lane, parking control, and carpool measures.

Finally, the Maryland plan proposed a program to restrict traffic during predicted high air pollution periods. No specific emission reductions were claimed for this measure; however, Maryland invited Federal participation in the development of such a program. Since the EPA does not know of any prediction system of demonstrated reliability in accurately forecasting all high air pollution periods, the Administrator was and remains unable to accept this strategy as a viable emission control program.

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[1] Traffic Operations Program to Improve Capacity and Safety.

ORIGINAL EPA PROPOSAL

In addition to the emissions reductions of the Federal Motor Vehicle Control Program, the EPA proposed, in the FEDERAL REGISTER of August 2, 1973 (38 FR 20769), the following measures to reduce carbon monoxide and hydrocarbon emissions: (1) Gasoline handling vapor recovery (modification of measure in Maryland's Transportation Control Plan); (2) inspection and maintenance (Modification of measure in Maryland's Transportation Control Plan); (3) mass transit improvements (included in Maryland's Transportation Control Plan) which were supplemented by specific regulations for (a) bus/carpool matching system, (b) management of parking supply, (c) limitation of public parking, and (d) preferential bus/carpool treatment; (4) vacuum spark advance disconnect (VSAD) of pre-1968 light duty vehicles; (5) oxidizing catalyst retrofit of certain light duty vehicles of model years 1968 through 1975; and (6) gasoline distribution limitations. The measures, as proposed would have provided for an attainment date of May 31, 1977. In addition, emission reduction credit was given to Maryland's proposed stationary source rule strengthening measure.

FINAL EPA PROMULGATION

The Environmental Protection Agency herewith promulgates regulations designed to correct specific deficiencies in the Maryland plan. The original EPA proposals have been modified to reflect testimony at the public hearings, written comments and other new technical information available to the Administrator, and to also reflect additional technical information provided by the Maryland Department of Transportation, the Baltimore City Department of Planning, and the Mass Transit Administration (MTD).

In the FEDERAL REGISTER of August 2, 1973 (38 FR 20769), the Administrator stated that the EPA would be evaluating a submission by the State of Maryland on June 28, 1973, concerning measures to reduce hydrocarbon emissions through vapor recovery during service station (Stage 1) and automobile tank (Stage 2) refueling operations. On July 20, 1973, Maryland forwarded proposed regulations for these measures, and subsequently adopted regulations on October 3, 1973 to be effective on December 2, 1973. The adoption by the State of Maryland of such regulations, their general content, and a number of steps which Maryland has taken to obtain approvable vapor collection systems has clearly demonstrated to the Administrator that Maryland is moving forward in this field. The Administrator is also aware that Maryland intends to approve systems whose collection efficiency is equal to or greater than 90 percent when such systems are demonstrated to be safe, reliable, and available. However, since the currently adopted regulations do not make a specific commitment for a 90 percent collection efficiency, the Administrator is promulgating regulations for vapor recovery which are similar to those which had been proposed on August 2, 1973. Comments which were received on these measures generally supported them in principle but raised questions concerning the availability of control systems by May 31, 1977, applicability to small service stations, and technical details. The requirements which are not being promulgated reflect modifications of the proposed regulations as follows: (a) More design flexibility is permitted to ensure vapor tight connections between delivery vessels and storage containers, (b) provisions have been added to ensure compatibility between systems used for Stages 1 and 2 fueling operations, (c) exceptions have been included for certain small size facilities, and (d) the compliance requirements have been redefined and the final compliance dates have been extended to March 1, 1976 for Stage 1 control systems and to May 31, 1977 for Stage 2 control systems. The EPA estimates that the total annual cost to each vehicle owner for the Stages 1 and 2 vapor control program will be $3.20 on the assumption that all the costs of control are reflected in the gasoline prices.

The State of Maryland has recently adopted (October 3, 1973) a regulation to achieve 100 percent reduction

in oxidant related hydrocarbon emissions from solvent used in drycleaning operations by requiring a total switch to non-photochemically reactive solvents in such operations by May 31, 1974. This regulation, as of its effective date, will be legally binding in the State of Maryland. However, since EPA cannot formally approve an adopted regulation until it has taken public comment thereon, in addition to the comments at the State public hearing, and since the adopted regulation on drycleaning solvents was not submitted to EPA in time to permit approval by the date of this promulgation, a standard EPA regulation, already promulgated for the Maryland portion of the National Capital Interstate AQCR, requiring at least 85 percent control of oxidant related emissions from drycleaning operations is promulgated today. Subject drycleaning operations are cautioned to take notice of the Maryland regulation requiring 100 percent control, and not to rely on the requirement for only 85 percent control promulgated today. The effect of the 100 percent control program, as compared to the 85 percent control program, will be to further increase the value of hydrocarbon emission reduction from 0.39 ton per peak period. EPA anticipates that this regulation will be rescinded when and if the necessary steps for approval of the Maryland regulation are taken.

The Maryland Plan included a control measure which would limit hydrocarbon emissions from all users of photochemically reactive materials to the fully controlled levels under existing regulations. Since this measure would not only result in an appreciable reduction in hydrocarbon emissions by 1977, but would also contribute substantially to the post-1977 maintenance of standards, the Administrator is promulgating a regulation herewith to assure its implementation.

The inspection and maintenance regulation promulgated is similar to the regulation which was proposed in the FEDERAL REGISTER of August 2, 1973 (38 FR 20769). It differs from the proposal in that it requires inspection and maintenance procedures be applied to medium (6000 to 10,000 lbs. gross vehicle weight, GVW) and heavy

(over 10,000 lbs. GVW) duty vehicles as well as light duty vehicles (under 6000 lbs. GVW). Inspection and maintenance of medium and heavy duty vehicles were not included in the proposal. However, since then, as discussed below, EPA has determined that certain retrofits on these vehicles are feasible, and an inspection and maintenance program is accordingly being promulgated to make sure these regulations achieve their purpose. The "loaded test" inspection and maintenance measure is also very similar to the program proposed by the State of Maryland in its transportation control addendum of June 28, 1973, but also calls for retest of failed vehicles following maintenance—a deficiency of the Maryland proposal. The Administrator, in promulgating this regulation, requires that quick action to implement the program be taken in order that the first annual inspection cycle can be completed by July 31, 1976. In comments and correspondence received by the EPA, the adoption of an inspection and maintenance program received virtually unanimous support. Based on fleet studies of light duty vehicles, the additional annual average cost for light duty vehicles is estimated to be $3 for the vehicle inspection, and $20 to $30 maintenance costs for those failing the inspection.

Because the Maryland plan lacks specific assurances of emission reductions attributable to the claimed 13 percent VMT reductions from improvements to public transportation, regulations are promulgated to strengthen and augment the Maryland plan. The Maryland plan to increase bus fleet size is approved subject to the requirement that a compliance schedule be submitted, definitely committing the State to the increases in fleet size set forth in the State plan.

In addition, the following regulations, which were, in substance, included in the August 2, 1973, notice of proposed rulemaking (38 FR 20769) are promulgated herewith in order to assure implementation of the measures proposed by the State of Maryland:

Establishment of exclusive bus/carpool lanes along major corridors which already have express bus service,

from the following outlying communities and/or residential areas to the CBD, by January 1, 1976: Halethorpe, Baynesville, Pikesville, Towson, Catonsville, Dundalk, Overlea-Parkville, Randallstown, Middle River-Essex, and the Mount Washington and Hunting Ridge Sections of Baltimore. In addition, exclusive lanes are required to be established from Linthicum to the CBD and from the CBD to Sparrows Point. The predicted benefit from all of the above exclusive bus/carpool lanes is a 3.1 percent reduction in commuter VMT. It is noted that taxis with two or more passengers can be regarded as carpools and will hence be qualified to make use of the exclusive bus/carpool lanes as defined above.

(The Administrator commends the City of Baltimore and the Mass Transit Authority for the well-developed 5.4 mile network of exclusive bus lanes in the Baltimore CBD accompanied by enforcement of parking restrictions. Since these exclusive lanes have been in operation since 1971, no additional regulations are included in this promulgation to assure express service in the downtown area.)

Restriction of on-street parking along all streets in the above-named corridors which contain dedicated bus/carpool lanes by May 1, 1975. This measure which is being promulgated corresponds with existing on-street parking regulations which the Administrator has been informed are receiving excellent compliance and enforcement by the City of Baltimore. Promulgation of the bus/carpool and parking restriction regulations is consistent with many comments which the EPA received in support of early improvements to mass transit.

Carpool Locator System. This measure, which was proposed by both the State of Maryland and EPA, requires the institution by an appropriate governmental agency of a computerized system by June 1, 1975, for matching potential carpool participants whose origin, destination, and commuting schedules are compatible. This system is to be made available to the maximum possible number of commuters. Such a measure is necessary if the restraints on individual vehicle use contained in this plan

are to have the desired effect of reducing VMT. The Administrator is aware of a commuter-computer program that has been instituted by radio station WFBR and television channel WJZ-TV, and the detailed plans for a city-wide program by the City of Baltimore Department of Planning. He commends these organizations for these progressive steps to stimulate carpooling, which, if expanded, may well be able to satisfy the regulation's requirements. This measure also received considerable public support in comments received by the EPA.

A detailed guide for the operation of a bus/carpool matching program, along with a discussion of a number of successful programs in operation in many areas of the country, are contained in "Carpool and Buspool Matching Guide" (Second Edition, U.S. Department of Transportation, Federal Highway Administration, May 1973). This report discusses the considerations involved in a successful program such as public information, incentives, data processing, and a continuous updating of the service, and is an excellent guide and reference for conducting such a program.

The EPA believes that this approach to reducing vehicle miles traveled is a very good short-term strategy. It involves a minimum investment.

Management of parking supply. This regulation, which was included in the EPA proposal, requires the preconstruction review of new parking facilities in pollution-impacted areas and will enhance the effectiveness of the City of Baltimore programs for increased mass transit patronage. The regulation herewith promulgated requires the obtaining of a permit before commencing the construction of any facility of 250 or more spaces. A permit will only be granted after it is determined that the parking facility will not have an effect inconsistent with a plan's VMT reduction goals or cause a violation of any ambient air quality standard. Facilities of 50 or more spaces may be reviewed if the Administrator determines that they will have a significant impact on the control strategy in a given area. This regulation applies to all construction commenced after August 15, 1973 unless

contract for on-site construction work was signed prior to that date.

This regulation establishes review procedures similar to those which the EPA is proposing for Indirect Sources as discussed in the FEDERAL REGISTER of October 30, 1973 (38 FR 29893). In the case of sources which would otherwise be subject to review both under this plan and under a finally-promulgated indirect Sources regulation, a single review procedure will be established.

Additional vehicle restraints and VMT reduction measures are included in the final regulations that were not among the proposed regulations. As indicated in the FEDERAL REGISTER of August 2, 1973 (38 FR 20769), the Administrator has been continuing to study additional reasonably available measures that will result in reduction of vehicle miles traveled by automobiles. The Act requires that all control measures that are reasonably available must be applied before an extension may be granted. EPA is under a court order to promulgate a plan that meets this test without further delay. Accordingly additional measures that have come to the attention of the Administrator and that are reasonably available in the effected areas are included in this promulgation. These are identified in the following subparagraphs. Although the regulations promulgated herewith are intended to be fully enforceable as promulgated, public comments on these measures is invited, and EPA is prepared to revise the plan in any manner which such comments indicate would be advisable.

Employer parking policy. This regulation provides for a bus and carpool incentive and promotion program that will initially require by February 1, 1974, all private and public employers providing 700 or more employee parking spaces in one location within the region to submit a plan to provide incentives to those employees that will encourage them either to ride to work in carpools or to ride the bus or streetcar. By February 1, 1975, plans will be required from employers with 70 or more employee spaces in one location. Possible elements of these plans are: subsidies to employees using mass transit,

reduced parking spaces or surcharges for those driving alone, charter buses (bus-pool), and preferential parking for carpools.

Bikeway network. This measure requires the State of Maryland to complete a study by March 1, 1975, of the best locations and designs for bikeway routes and bikeway parking facilities for commuters into the Baltimore CBD. The study is to be made with a view toward safety and security, and is to make recommendations for "rules of the road" for bicyclists. Upon conclusion of the study, the State of Maryland and such local jurisdictions as the State requests to participate, are required to establish at least a 15-mile bicycle network oriented to the Baltimore CBD by May 31, 1976, unless it is demonstrated to the Administrator's satisfaction that the maximum practicable network is a lesser amount. The Administrator commends the Maryland Department of Transportation and the City of Baltimore Department of Planning for their on-going bikeway programs, several elements of which are already in the construction phase.

Since the Clean Air Act of 1970 requires that all reasonably available measures be implemented as expeditiously as practicable, the Administrator also proposed, on August 2, 1973 (38 FR 20769), the implementation of several retrofit measures which will result in substantial reductions of hydrocarbon and carbon monoxide emissions. Catalytic retrofit devices, which are necessary to provide the maximum emission reductions (albeit insufficient to assure attainment of the national ambient air quality standards), will not be available until late 1976. However, the dictates of the Clean Air Act require that all feasible alternative measures be implemented as expeditiously as practicable. Hence, the Administrator proposed on August 2, 1973 (38 FR 20769), and is promulgating herewith, the installation, by January 1, 1976, of vacuum spark advance disconnect (VSAD) devices on all pre-1968 light duty vehicles. Although substantial adverse testimony was presented at the public hearings to indicate the socially regressive nature of these devices, citing that the financial burden will fall on those least

able to pay, the Administrator has concluded that installation of this relatively inexpensive device is necessary to comply with the terms of the Clean Air Act and will not impose an excessive financial burden on the owners of pre-1968 automobiles. As noted in the General Preamble, the VSAD costs only $20 and provides reductions of 25 percent for hydrocarbons and 9 percent for carbon monoxide. The Administrator is herewith promulgating a measure whose regulatory language merely requires the installation of a retrofit device which will achieve at least the above-stated reduction of hydrocarbons and carbon monoxide. By so doing, the State of Maryland is provided the option of establishing a single carburetion-type retrofit device for all pre-1968 vehicles and appropriate 1968-1971 model year vehicles, although probably at a cost higher than the VSAD device.

Installation of the catalytic retrofit devices on 1968-1975 model year light duty vehicles capable of performing properly on unleaded 91 Research Octane Number (RON) gasoline was proposed in the August 2, 1973 issue of the FEDERAL REGISTER (38 FR 20769). This measure is promulgated herewith only for the 1971-1975 model year light duty vehicles since only 20 percent of the pre-1971 light duty vehicles can perform properly on the unleaded 91 RON gasoline which will be available. Post-1975 cars will be equipped with catalytic devices by the manufacturer. Despite the substantial adverse testimony which was presented at the public hearings, the Administrator has included regulations herewith which require the installation of these devices on all applicable vehicles of the 1971-1975 model years in order to comply with the requirements of the Clean Air Act. Emission reductions of 50 percent for hydrocarbons and 50 percent for carbonmonoxide are expected to result from implementation of this measure. As noted in the General Preamble, the proportion of light duty vehicles to which catalytic systems are applicable is 75 percent of 1971-1974 model year vehicles.

Since the measures proposed in the August 2, 1973 notice of proposed rulemaking (38 FR 20769) were in-

sufficient to assure attainment of the national ambient air quality standards, the Administrator is promulgating additional retrofit measures which have been determined to be feasible since the time of the former proposal. These additional measures include: (1) Retrofit with air/fuel control devices of light duty vehicles of 1968-1971 model years which are not required to be retrofitted with an oxidizing catalyst; (2) catalytic retrofit of all medium duty vehicles (6,000 to 10,000 lbs. gross vehicle weight) which are capable of performing properly with 91 RON gasoline; (3) retrofit of medium duty vehicles, which are not required to be retrofitted with an oxidizing catalyst, with air/fuel retrofit devices; and (4) retrofit of all heavy duty vehicles (gross vehicle weight greater than 10,000 lbs.) with carburetor modifications or alternative air/fuel control devices.

Retrofit with an air/fuel control device of 1968-1971 model year light-duty vehicles which are not required to be retrofitted with an oxidizing catalyst will result in a 25 percent reduction in hydrocarbon emissions and a 40 percent reduction in carbon monoxide emissions for each vehicle. Although final evaluation by the EPA awaits the completion of a test program scheduled to be completed by November, 1974, preliminary tests by several manufacturers indicates no degradation of engine performance after 25,000 miles of operation.

A regulation is included in this promulgation which will require the installation of oxidizing catalyst devices on all 1971-1975 model year medium duty vehicles which are capable of performing properly with unleaded 91 RON gasoline. EPA analysis of limited available technical data indicates potential reductions of 50 percent of hydrocarbon emissions and 50 percent of carbon monoxide emissions. Since the operating characteristics of medium duty vehicle engines are essentially the same as those of light duty vehicles, no appreciable degradation in performance is expected to result from the installation of these devices.

For those pre-1974 medium duty vehicles which are not required to be retrofitted with an oxidizing catalyst,

a regulation is included which will require the installation of an air/fuel device, which will provide a leaner air-fuel mixture and will result in emissions reductions of 15 percent for hydrocarbons and 30 percent for carbon monoxide. Since the leaner mixture produces more complete combustion, test data indicate a net fuel saving of 4 percent.

The substantial emissions generated by heavy duty vehicles (gross vehicle weight greater than 10,000 lb.) suggest that appreciable reductions could result from the installation of appropriate control devices on this class of vehicles as originally proposed by the State of Maryland. Since current tests by the EPA indicate the incidence of deleterious high temperature effects on exhaust systems and catalytic devices when catalytic converters are installed on heavy duty vehicles, the Administrator is promulgating herewith a regulation which requires the installation of carburetor modifications or air/fuel retrofit devices on all heavy duty vehicles by May 31, 1977. Results of recent tests conducted as part of an evaluation program sponsored jointly by the EPA and the City of New York indicate potential reductions of 30 percent of hydrocarbon emissions and 40 percent of carbon monoxide emissions.

A regulation is included in this promulgation that would require State and/or local authorities to monitor VMT, vehicle speeds, and per-vehicle emission reductions, and to report such data to the Administrator on a quarterly basis.

Finally, even with the timely implementation of the aforementioned measures (See Table 1), it is estimated that the national standards for photochemical oxidants and carbon monoxide will not be met in the Metropolitan Baltimore Intrastate Region by May 31, 1977. Under the requirements of the Clean Air Act, the EPA has no choice but to include in the plan any such measure that can achieve the standards by that date. Therefore, the Administrator is promulgating a regulation limiting gasoline sales (rationing) to the extent necessary to achieve the standards by the May 31, 1977 date. However, the EPA does not believe that such massive gasoline rationing, assuming adequate supplies are available, is either socially acceptable or enforceable, and will utilize every means available to avoid the need to impose gasoline rationing to reach air quality goals by 1977.

SUMMARY

Comparison of the strategies proposed by Maryland on June 15, 1973, and by the EPA on August 2, 1973 (38 FR 20769) with the strategies promulgated herewith is presented in Table 1. Base year emissions and the effects of the promulgated measures are presented in Table 2.

TABLE 1. EPA TRANSPORTATION CONTROL PLAN

Maryland plan	EPA proposal	EPA promulgation
STATIONARY SOURCE CONTROLS		
Service station tank vapor recovery.	Service station tank vapor recovery.	Service station tank vapor recovery.
Service station pump vapor recovery.	Service station pump vapor recovery.	Service station pump vapor recovery.
Control of dry cleaning losses.	Control of dry cleaning losses.	Control of dry cleaning losses.
Limitations of major source emissions.	Control of organic solvents.	Limitation of major source emissions.
Prohibition of new major sources.		
MOBILE SOURCE CONTROLS		
Inspection-maintenance.	Inspection-maintenance.	Inspection-maintenance.
HDV catalytic retrofit.		HDV air-fuel control retrofit.
	VSAD retrofit, pre-68 LDV.	VSAD retrofit, pre-68 LDV.
	LDV catalytic retrofit.	LDV catalytic retrofit.
		LDV air-fuel control retrofit.
		MDV catalytic retrofit.
		MDV air-fuel control retrofit.
VMT CONTROLS		
Transit service improvements.		Carpool locator.
Carpool locator.	Exclusive buslanes.	Exclusive busways.
Express busways.	Limitation of onstreet parking.	Limitation of onstreet parking.
Traffic flow improvements.		Traffic flow improvements.
Episode vehicle exclusion.		Management of parking supply.
		Employer's parking policy.
		Study and establishment of bikeways.
	Gasoline distribution limitation.	Gasoline distribution limitation.

TABLE 2.—COMPILATION OF CONTROL STRATEGY EFFECTS FOR THE METROPOLITAN BALTIMORE INTRASTATE AIR QUALITY CONTROL REGION ON MAY 31, 1977

	Carbon monoxide		Hydrocarbons	
	Tons per year	Percent of base year	Tons per peak period	Percent of base year
1972 ton per year (base year)	592,737	100.0	61.0	100.0
Reduction required to reach NAAQS	337,860	57.0	42.7	70.0
STATIONARY SOURCES				
Emissions without control strategy	103,300	17.4	13.5	22.1
Expected reduction from existing regulations:				
(a) Solvent control			0.85	1.4
(b) Gasoline handling vapor recovery (bulk)			1.0	1.6
(c) Dry cleaning emissions control			0.39	0.6
(d) Aircraft ground operations			—0.18	—0.3
(e) Net result of industrial growth	—5,575	—0.9	—0.17	—0.3
Promulgated stationary source controls:				
(a) Control and prohibition of major sources			0.52	0.9
(b) Gasoline handling vapor recovery (stage I)			0.57	0.9
(c) Gasoline handling vapor recovery (stage II)			0.95	1.6
Stationary source emissions remaining	108,875	18.4	9.57	15.7
MOBILE SOURCES				
Emissions from LDV's, MDV's, and HDV's without control strategy	489,437	82.6	47.5	77.9
Expected reductions:				
(a) Federal motor vehicle control program *	156,437	26.4	18.7	30.7
(b) Inspection and maintenance (LDV, MDV)	23,710	4.0	2.23	3.7
(c) VSAD retrofit, pre-1968 LDV's	1,656	0.3	0.29	0.5
(d) Air-fuel retrofit, 1968-1971 LDV's	26,491	4.5	0.80	1.3
(e) Catalytic retrofit, 1971-1975 LDV, MDV	58,681	9.9	3.38	5.5
(f) Air-fuel retrofit, pre-1974 MDV's	2,916	0.5	0.22	0.4
(g) Air-fuel retrofit, HDV's	26,512	4.5	1.38	2.3
(h) Traffic flow improvements	3,065	0.5	2.61	4.3
(i) VMT measures: Exclusive buslanes, carpool locator, bikeway program, parking restrictions	2,734	0.5	0.43	0.7
(j) Gasoline distribution limitation	78,381	13.2	8.73	14.3
Mobile source emissions remaining	108,854	18.4	8.73	14.3
Total reductions	375,008	63.3	42.7	70.0
Total emissions remaining	217,729	36.7	18.3	30.0
Total allowable emissions	254,877	43.0	18.3	30.0

* Includes effect of VMT growth.

FINDINGS

The Clean Air Act requires that national ambient air quality standards be attained as expeditiously as practicable. However, several of the control measures relied on in this plan will not be available until after 1975. Even if the need to promulgate a gasoline rationing program were discounted, the EPA has determined that a 2-year extension till May 31, 1977 is required for implementation of the measures for the catalytic converter retrofit of heavy duty vehicles, and systems for the control of vapor losses in transferring gasoline to automotive fuel tanks.

In the FEDERAL REGISTER of August 2, 1973, comments were solicited concerning controls from other stationary sources. The responses received indicated that if additional controls were imposed on some small sources the benefits would be negligible. Consequently, the Administrator believes, for purposes of this transportation control plan, that the current state regulations, including recent amendments covering volatility of surface coatings, are adequate, and for all practical purposes are equivalent to those currently adopted by the County of Los Angeles Air Pollution Control District as Rule 66.

The FEDERAL REGISTER of August 2, 1973 also proposed a regulation which would limit gasoline distribution starting July 1, 1974 to the total gallonage of the base year (July 1, 1972 to June 30, 1973) and starting May 31, 1977 to the amount which, when combusted, will not result in exceeding air quality standards. As discussed in the General Preamble, the Administrator has determined that limitations on gasoline sales are not a reasonably available measure.

VMT REDUCTIONS

In calculating the emissions reductions necessary to attain and maintain national standards for carbon monoxide and photochemical oxidants in the Metropolitan Baltimore Intrastate Region, the EPA has assumed, on the basis of "A Methodology for Estimating Macro-Level Travel Demand in the Baltimore Metropolitan Area," Alan M. Vorhees and Associates, February 1973, a 3 percent growth in VMT by 1977 due to new highway construction and modification of existing highways. This

estimate does not include the effect of the presently planned 3-A Highway System which essentially would not be built until after May 31, 1977, the latest date for attainment of standards. Any increase of emissions resulting from such a growth would be inconsistent with the need to reduce VMT to attain and maintain air quality standards.

However, the exact effect of highway construction and modification programs can not be accurately predicted. It is entirely possible that a highway project would reduce total VMT in the area impacted by its construction; or that it would increase the VMT, but by relieving congested alternate routes, reduce total emissions; or, on the other hand, it would serve to generate new VMT by fostering development that could be incidental to its prime purpose.

Thus, the Administrator in considering this dilemma is faced with three alternatives: (a) Promulgation of a regulation which in effect would declare a moratorium on further highway construction, (b) promulgation of a regulation requiring a review and approval by the EPA (or designee) prior to the construction or modification of a highway, and (c) utilize currently developed land-use planning procedures involving "indirect sources", environmental impact statements and section 136(b) of the Federal Aid Highway Act of 1970 (23 U.S.C. 109(j)). Testimony was received suggesting a highway construction moratorium be declared by Maryland, et al.

A blanket moratorium would be an irresponsible act if highway projects that could lead to reduced emissions were included. A special regulation which requires prior review and approval of all projects opens environmental concerns to fragmentation and additional technical complexities that would compound the bureaucratic superstructure, and still not be responsive to long-term growth considerations. Therefore, the Administrator is of the opinion that the intelligent use of current procedures offers the best prospect to control VMT and reduce emissions, especially hydrocarbons, which contribute to the excessive levels of photochemical oxidants in the Metro-

politan Baltimore Intrastate Region. These procedures are discussed in the following paragraphs. Regulations that require land-use planning tied to air quality considerations were recently proposed by the EPA in response to a court order (38 FR 20893, October 30, 1973). These "indirect source" regulations will require the review, both long-term and short-term, of certain classes of new construction to ensure maintenance of air quality standards. The State of Maryland is currently proposing such review procedures, in place of those which the Administrator was obliged to propose earlier pursuant to the court order. These regulations will require the review for effect on air quaity of all new large parking facilities, highways, aiports, housing developments, and other development and/or construction that may increase automobile emissions because of increased vehicular travel.

The EPA believes that the review of indirect sources should be at the State and local level and any EPA regulations promulgated will be enforceable by the State at its option. In addition, when and if Maryland submits approvable indirect source regulations of its own, the EPA will rescind any duplicating EPA regulations.

As previously stated, a number of comments were received on the continued construction of highways, and some urge a moratorium on new construction. Such a prohibition, to the extent required by air quality considerations, is already imposed by Federal statute. Section 136(b) of the Federal Aid Highway Act of 1970 (23 U.S.C. 109(j)) requires that any new Federally aided highways be consistent with applicable implementation plans under the Clean Air Act. Accordingly, any new highways that would interfere with the VMT reduction goals of the Baltimore plan, or interfere with the attainment and maintenance of national ambient air quality standards would not be consistent with the requirements of the plan.

The EPA also reviews and comments on new highway aid projects as part of its review of environmental impact statements under the National Environmental Policy

Act (NEPA), (42 U.S.C. 4321-4347). One such statement for the planned 3-A Highway System in the Metropolitan Baltimore Intrastate Region is currently in preparation. If calculations show an increase in emissions attributable to VMT growth, then the system could be considered to interfere with the attainment and maintenance of air quality standards, and modifications would have to be made to its design.

If such a situation were to materialize for the 3-A Highway System, or indeed any other Federally aided highway construction program, then the EPA envisages other possibilities. Two such possibilities are: (1) The withdrawal of segments of an interstate highway under provisions of section 137 of the Federal Aid Highway Act and the use of the equivalent Federal funds for non-highway public mass-transit projects, and (2) the dedication of such highways, or portions thereof, for the use of express buses and/or carpools that would, in effect, accelerate region-wide mass transit.

Future Initiatives

There have been a number of discussions with the Maryland Bureau of Air Quality Control concerning the hydrocarbon emission inventory baseline upon which control measures proposed by the State or promulgated by the EPA have been developed. It has been suggested that the method to predict oxidant reductions should employ a reactive hydrocarbon-oxidant relationship. Unfortunately, there are presently no data available for the Metropolitan Baltimore Intrastate Region, that would permit the development of such a relationship, nor is it certain how this would affect the reductions needed. There is, however, evolving information on reactivities of various organic compounds known to be part of the Baltimore area's emission inventory—including those from mobile sources.

This matter is under continuing review by the EPA.

The adequacy and correctness of this promulgation to ensure attainment of oxidant standards by May 31, 1977, will be indicated by reduced levels of oxidant measurements with the passage of time. There have been reported in August 1973, higher levels of oxidants than that upon which the rollback calculations were based (0.21 ppm). Initial information available to the EPA indicates that these readings were validated at lower values (approximately 0.20 ppm), after appropriate corrections were made. Nevertheless, the Administrator wishes to emphasize the importance of a careful review by the State of Maryland of all current data so that any determination of needed revisions to this promulgation may be made as soon as possible.

Mass Transit and Socio-Economic Impact

Improved and expanded mass transit facilities in the Baltmore Metropolitan area are a necessary corollary to the proposed disincentives and restraints on the personal use of automobiles. The emphasis must be a large-scale expansion of a limited public transportation system for both CBD and suburban commuters and shoppers. For the short-term, the best possibility of achieving the required transit expansion is by increasing the capacity of radial and circumferential bus routes. However, the amenities and convenient utility of all public transportation systems must be considerably improved to ensure attraction and retention of commuter ridership. As previously indicated emissions related to VMT in the Metropolitan Baltimore Intrastate Air Quality Control Region must be considerably reduced if air quality standards are to be attained by May 31, 1977 without the imposition of gasoline rationing. Information in "24-Hour Work Transit and Work Auto Driver Trips (Compressed)" and "1980 Baltimore Regional Socio-Economic Data," shows very high levels of commuting trips between various suburban residential areas and employment centers, and between which little public transportation either exists or is used. Indeed, calculations by the EPA for interconnection of these areas which were performed in a manner similar to those which predicted a 3.1 percent VMT reduction attributable to the promulgated bus/carpool lanes to the Baltimore CBD, show a

potential for an additional 4.7 percent VMT reduction. Estimates also show that approximately 1,000 additional buses, beyond the 375 presently planned, would be needed to accomplish such results, assuming one bus trip per rush hour. The Administrator therefore strongly encourages the State of Maryland to develop plans to fulfill suburban area mass transit needs.

The Administrator, therefore, will provide all possible support to Federal, State, and local agencies, and to private groups in their efforts to expand the mass transit facilities by May 31, 1977.

The problem in Baltimore is somewhat formidable since there is only a minimal commuter rail system. Comments received by the EPA indicate a real potential whose practicality should be actively explored.

Within the Metropolitan Baltimore Intrastate Region the upgrading of bus services, which can be accomplished in a relatively short time, should permit the absorption of a considerable portion of the automobile travel displaced by the strategies promulgated herein.

In addition, private automobiles, which are designed to carry four to six persons and currently carry an average of 1.2 commuters per trip in the Baltimore area, represent the largest unused pool of transportation capacity now available.

Although the impact of VMT reductions on aspects of human welfare other than air quality is difficult to assess precisely, these measures may create some inconvenience in the short run. Persons accustomed to driving downtown at their own conveience in the assurance of fiding a parking space while they shop, or persons accustomed to commuting to and from work at times to some extent of their own choosing, will have to modify their previous habits. Some shorter trips will be shifted from automobiles to other forms of transportation such as bicycles or walking.

There may be significant positive aspects associated with these measures. Many experts believe that the sprawling development patterns fostered by widespread automobile use are unduly wasteful of energy, land, and

other resources, and have contributed to the decay of urban centers. More widespread use of other modes of transportation will be necessary if these tendencies are to be corrected. The vapor control measures at service stations will result in a saving of fuel while adding less than one cent per gallon to the cost.

Reference has already been made to cost estimates for the inspection and maintenance and retrofit programs being promulgated.

Other Public Comments

At the EPA hearing, a number of persons expressed the opinion that the standards for photochemical oxidants and carbon monoxide, upon which the development of the transportation control plan is based, were subject to debate and perhaps were set at limits below those which would be appropriate. Some comments also called for an extension of the date for attainment of standards beyond 1977 and that strategies to attain standards be developed from a more extensive air quality data base. There was encouragement for review and possible revisions to the standards. Such a review is now being conducted by the National Academy of Sciences.

Also presented at the hearing were a number of statements concerning the potential for expanding the virtually non-existent commuter rail system by using existing freight trackage and defunct rail rights-of-way. Testimony was presented which showed the Baltimore area to be laced with such lines. Many of the communities linked by these rights-of-way correspond with known commuting corridors. In "Commuter Rail Service Proposals for the Baltimore Metropolitan Area," by Harry W. Miller, an initial ridership potention [sic] of over 5,700 seats was indicated. On the basis of this figure, EPA estimates that full use of that capacity could translate into a commuting VMT reduction of about 1.5 percent. This assumes that the rail lines would complement present or potential bus routes and not compete for the same ridership. In addition, statements were presented concerning the possibility of extending the use of light-rail

(streetcar) transportation along surface corridors including the aforemetnioned rail rights-of-way. The opinion was expressed that such routes could be activated in a 2 to 3 year period as compared to the planned subway system (Metro) which will not be a transportation factor until the 1980's. While it is generally recognized that the EPA does not have regulatory authority to mandate rail systems, the testimony would support a strong recommendation by the Administrator that the State of Maryland and all appropriate agencies expedite every consideration of rail alternatives. This recommendation is particularly timely in light of growing fuel shortages that are expected to be felt well in advance of an overt gasoline rationing program that is being promulgated as a contingency measure in 1977.

EPA Studies and Guidelines

Further information on transportation control, land use, and motor vehicle emissions may be obtained from one or more of the following documents which the Environmental Protection Agency has in its possession or has published:

(a) "Prediction of the Effects of Transportation Controls on Air Quality in Major Metropolitan Areas" and "Evaluating Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas" November 1972.

(b) "Transporation Controls to Reduce Motor Vehicle Emissions in Major Metropolitan Areas" December 1972. This document is a summary of a study of 14 cities conducted with the view of recommending specific transportation control strategies. (Separate reports for each of the 14 cities are also available.)

NOTE: The documents listed in (a) and (b) above are available from the Air Pollution Technical Information Center, EPA, Research Triangle Park, North Carolina 27711.

(c) "Control Strategies for In-Use Vehicles" November 1972. This report is available from EPA, Mobile

Source Pollution Control Programs, 401 M Street, SW., Washington, D.C. 20460.

(d) "Transportation Control Measures" FEDERAL REGISTER (38 FR 15194) June 8, 1973.

(e) "Technical Support Document for the Transportation Control Plan for the Metropolitan Baltimore Intrastate Region", EPA Region III.

(f) "Aircraft Emissions" Impact on Air Quality and Feasibility of Control", U.S. Environmental Protection Agency.

(g) "Facilities and Services Needed to Support Bicycle Commuting into Center City Philadelphia", Philadelphia Bicycle Coalition, June 1973.

(h) "Evaluation Report for the State of Maryland (Metropolitan Baltimore)".

(i) "Transportation Controls to Reduce Motor Vehicle Emissions in Baltimore, Maryland" APTD-1443 (December 1972), available from EPA, Office of Air and Water Programs, Research Triangle Park, North Carolina 27711.

(j) Carpool and Buspool Matching Guide (Second Edition) May 1973, available from the U.S. Department of Transportation, Federal Highway Administration.

(k) "A Methodology for Estimating Macro-Level Travel Demand in the Baltimore Metropolitan Area", A. M. Voorhees & Associates, Inc., February 1973.

(l) "Commuter Rail Service Proposals for the Baltimore Metropolitan Area", by Harry W. Miller, Rail Ways of the Americas, Inc., September 5, 1973.

(m) "Proposed Commuter Rail Improvement Program", Maryland Department of Transportation, May 1972.

(n) "Bikeways Progress Report", Harry R. Hughes, August 31, 1973.

(o) "Summary of MTA Express Service—Regular Routes", R. E. Prangley, September 4, 1973.

(p) "24-Hour Work Transit and Work Auto Driver Trips Compressed" (Computer Printout), Maryland Department of Transportation, November 21, 1973.

(q) "1980 Baltimore Regional Socio-Economic Data" (Computer Printout), Maryland Department of Transportation, July 19, 1973.

(r) "An Interim Report on Motor Vehicle Emission Estimation", U.S. Environmental Protection Agency, May 1973.

(s) "Mixing Heights, Wind Speeds, and Potential for Urban Air Pollution Throughout the Contiguous United States", U.S. Environmental Protection Agency (1971).

All documents (except (p) and (q)) listed above are available for inspection at the Freedom of Information Center, U.S. Environmental Protection Agency, Room W232, 401 M Street SW., Washington, D.C. 20460, and at the EPA Region III office, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. Documents (p) and (q) are available for inspection at the EPA Region III office only.

Effective Dates

Should the State of Maryland submit revisions to its own plan which are determined to meet the requirements of the law, the regulations set forth in this notice will be rescinded. It is the desire of the Environmental Protection Agency that the plan to attain and maintain the national ambient air quality standards in the Metropolitan Baltimore Intrastate Region be a State plan carried out by the State.

The regulations promulgated today become effective on January 11, 1974, except in the case of those regulations that impose requirements for specific action at earlier dates. In such cases, the Administrator has found that good cause exists for accelerating the effective date because of the need to take action as expeditiously as practicable in order to attain and maintain the national ambient air quality standards. The regulation for management of parking supply is effective immediately upon signature of this plan and applies to actions taken after August 15, 1973. The regulation to control growth of major sources of photochemically reactive organic materials is effective after December 12, 1973.

Although to comply with the requirements of the court order, this plan has been promulgated in legally binding form, comment on it is invited on or before January 14, 1974. At the conclusion of the comment period, and after the comments have been evaluated, EPA will revise this plan if revision is appropriate in the light of the comments received.

This rulemaking is made pursuant to section 110(c) and 301(a) of the Clean Air Act (42 U.S.C. 1857c-5(c)(a) and 1857(g)).

Dated: November 30, 1973.

John Quarles,
Acting Administrator.

Subpart V of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. Section 52.1072 is amended by revising paragraph (b) to read as follows:

§ 52.1072 Extensions.

* * * * *

(b) The Administrator hereby extends for two years the attainment dates for the national standards for carbon monoxide and photochemical oxidants in the Maryland portion of the National Capital Interstate Region and in the Metropolitan Baltimore Intrastate Region.

2. Section 52.1073 is revised to add paragraphs (d) and (e) as follows:

§ 52.1073 Approval status.

* * * * *

(d) With respect to the transportation control strategies submitted on April 16, June 15, June 28, and July 9, 1973, the Administrator approves the measures for the Metropolitan Baltimore Intrastate Region for carpool

locator, dry cleaning solvent use, gasoline vapor recovery, emission "freeze" by limiting construction of new sources, increased bus fleet size, and traffic flow improvements with the exceptions set forth in §§ 52.1074, 52.1077, 52.1080, 52.1081, and 52.1082.

(e) With respect to the transportation control strategies submitted on April 16, June 15, June 28, and July 9, 1973, the Administrator disapproves the measures for inspection programs, heavy duty vehicle inspection and retrofit and vehicle use restriction during predicted stagnations for the reasons set forth in §§ 52.1074 and 52.1081.

3. In § 52.1074, paragraphs (a) and (b) are revised to read as follows:

§ 52.1074 Legal authority.

(a) The requirements of §§ 51.11(b) and 51.14(a)(3)(iv) of this chapter are not met with respect to the vehicle inspection program and the heavy duty inspection and retrofit programs referred to in §§ 52.1073(c) and 52.1073(e), because a definite commitment to obtain legal authority was not made and a definite timetable to obtain legal authority was not submitted. The requirements of §§ 51.11(b) and 51.14(a)(3)(iv) of this chapter are also not met with respect to the strategy referred to in § 52.1073(e) to restrict vehicle use in the Metropolitan Baltimore Region during predicted stagnations because that strategy was not defined in sufficient detail to show what specific legal authority would be needed. With respect to the carpool locator program, the traffic flow program, and the program to increase the bus fleet size, all referred to in § 52.1073(d) copies of the relevant sources of legal authority were not submitted. Hence, the requirements of § 51.11(c) of this chapter are not met with respect to those strategies.

(b) The requirements of § 51.11(f) of this chapter are not fully met for the Maryland portion of the National Capital Region because it is not clearly demonstrated that all local agencies have requisite legal authority, or that the State retains responsibility for implementing the transportation control measures. The requirements of § 51.11(f) of this chapter are not met with respect to the traffic flow improvement program in the Metropolitan Baltimore Region, referred to in § 52.1073(d), since the State of Maryland does not have authority to carry on the program in the City of Baltimore if the City fails to implement it.

4. In § 52.1077, paragraph (c) is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 52.1077 Source surveillance.

* * * * *

(c) *Monitoring transportation sources.* * * *

(2) In order to assure the effectiveness of the inspection and maintenance programs and the retrofit devices required under §§ 52.1089, 52.1091, 52.1092, 52.1093, 52.1094, 52.1095, 52.1096, 52.1097, 52.1098, 52.1099, and 52.1100 the State shall monitor the actual per-vehicle emissions reductions occurring as a result of such measures. * * *

(3) In order to assure in the Maryland portion of the National Capital Interstate Region the effective implementation of the carpool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking and the parking surcharge approved in § 52.1073(b) and to assure in the Metropolitan Baltimore Intrastate Region the effective implementation of the traffic flow improvement program and the increased bus fleet approved in § 52.1073(d) and the exclusive bus lanes required under § 52.1108, the carpool locator program required under § 52.1104, the parking restrictions and limitations required under §§ 52.1109, and 52.1111, and the bikeways required under § 52.1106, the State shall monitor vehicle miles traveled and average vehicle speed for each area in which such sections are in effect and during such time periods as may be appropriate to evaluate the effectiveness of such a program. * * *

§ 52.1078 [Amended]

5. In § 52.1078, the attainment date table is revised by replacing the date "May 31, 1975", for attainment of

the national standards for carbon monoxide in the Metropolitan Baltimore Intrastate Regions with the date May 31, 1977, and by replacing the letter "a" which designates the attainment date of national standards for photochemical oxidants in the Metropolitan Baltimore Intrastate Region with the date May 31, 1977.

6. In § 52.1080, paragraphs (i) through (k) are added to read as follows:

§ 52.1080 Compliance schedules.

* * * * *

(i) With respect to the transportation control strategies submitted on April 16, June 15, June 28, and July 9, 1973, by the State for the Metropolitan Baltimore Intrastate AQCR, the requirements of § 51.14(a)(3)(iv) of this chapter are not fully met for the measures for increased bus fleet and traffic flow improvements. Provisions to satisfy the requirements of § 51.14(a)(3)(iv) of this chapter and to cure lack of compliance with §§ 51-.11(c) and 51.14(a)(3)(i) of this chapter are promulgated in paragraphs (j) and (k) of this section.

(j) With respect to the measure for increased bus fleet approved in § 51.1073(d) of this chapter:

(1) The State of Maryland shall, no later than January 31, 1974, submit a compliance schedule to the Administrator to put the program in effect. The compliance schedule shall, at a minimum, include copies of the legal authority which authorizes purchase of buses and shall also provide that the State of Maryland shall, on or before March 1, 1974, submit to the Administrator a statement, signed by the official or officials of the State who are authorized to enter into contracts for bus purchase, indicating that financial commitments have been made or definitely will be made by the State of Maryland to purchase buses at least in the following amounts and according to the following schedule:

(i) June 1973 to June 1974—150 buses.
(ii) June 1974 to June 1975—75 buses.
(iii) June 1975 to June 1976—75 buses.
(iv) June 1976 to June 1977—75 buses.

(k) With respect to the measures for traffic flow improvements approved in § 52.1073(d):

(1) The State of Maryland and, with respect to projects under its control, the City of Baltimore, shall, on or before March 1, 1974, each submit to the Administrator a compliance schedule which shall be subject to the Administrator's approval and which shall include, at a minimum, copies of all relevant sources of authority for the program of traffic flow improvements, a signed statement by the Governor of Maryland, the Mayor of Baltimore or their designees, identifying the sources of funding for the program, and a complete list of specific projects and their estimated initiation and completion dates. All projects necessary to the pollution reduction benefits claimed in the State plan must be completed by May 31, 1977. On or before May 1, 1974, the State of Maryland and the City of Baltimore shall submit to the Administrator legally adopted regulations providing for completion of the projects in accordance with the compliance schedule.

(2) The State of Maryland and the City of Baltimore shall in the compliance schedule required pursuant to this paragraph, indicate for each project in the traffic anticipated in average annual daily traffic volume within twenty years of project completion on the road or highway in question because of the project. No project shall be approved by the Administrator if the air pollution benefits in terms of speeding traffic flow will be negated by increased traffic volume.

7. Section 52.1081 is amended by adding paragraphs (c) and (d) to read as follows:

§ 52.1081 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

* * * * *

(c) With respect to the transportation control plan for the Metropolitan Baltimore Intrastate Region submitted by the State on April 16, June 15, June 28, and July 9, 1973, the requirements of § 51.14(a)(3)(i) and (ii) of this chapter are not met because there are no proposed regulations, nor an adequate description of en-

forcement and administrative procedures for the carpool locator program approved in § 52.1073(d). To cure these deficiencies and the deficiencies set out in § 52.1074(a), a carpool locator regulation is promulgated in § 52.1104. The requirements of § 51.14(a)(3)(i) of this chapter are also not met, in whole or in part, for inspection/maintenance, heavy duty retrofit, and restricted vehicle use during predicted stagnations referred to in § 52.1073(e), and the traffic flow improvement program referred to § 52.1073(d).

(d) The requirements of § 51.14(c) of this chapter are not met with respect to the restrictions on vehicle use during predicted stagnations disapproved in § 52.1073(e). Maryland has not demonstrated the availability of a reliable method or system for predicting air episodes. The requirements of § 51.14(c) of this chapter are also not met with respect to gasoline vapor controls since Maryland does not propose to achieve any specific percentage of emission reductions with the control apparatus it proposes, nor does it demonstrate what reduction the controls it proposes will achieve.

8. Section 52.1082 is amended by adding paragraph (b) to read as follows:

§ 52.1082 Rules and regulations.

* * * * *

(b) The requirements of § 51.22 of this chapter are not met for the Metropolitan Baltimore Intrastate Region because adopted regulations to implement proposed stationary control measures referred to in § 52.1073(d) establishing an "emission freeze" were not submitted, and adopted regulations to control gas handling and dry cleaning emissions, measures referred to in § 52.1073(d), were not submitted in time to be approved prior to this promulgation. Substitute regulations for gas handling and dry cleaning emissions are promulgated in §§ 52-.1101, 52.1102, and 52.1107. The gasoline vapor recovery regulations as promulgated specify a 90 percent reduction in emissions, thus curing the defect noted in paragraph (d) of § 52.1081. A substitute regulation for the emission freeze is promulgated in § 52.1112.

9. Part 52 is amended by adding new sections to read as follows:

§ 52.1095 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles that need emission control-related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with the meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish an inspection and maintenance program applicable to all light-duty, medium-duty, and heavy-duty vehicles registered in the area specified in paragraph (b) of this section that operate on public streets or highways over which it has ownership or control. The State may exempt any class or category of vehicles that the State finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty, medium-duty, and heavy-duty motor vehicles at periodic intervals no more than 1 year apart by means of a loaded emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After July 31, 1976, the State shall not register or allow to operate on public streets or highways any light-duty, medium-duty, or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After July 31, 1976, no owner of a light-duty medium-duty, or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The State of Maryland shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposal and regulations that it will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

§ 52.1096 Vacuum spark advance disconnect retrofit.

(a) Definitions:

(1) "Vacuum spark advance disconnect retrofit" means a device or system installed on a motor vehicle that prevents the ignition vacuum advance from operating either when the vehicle's transmission is in the lower gears, or when the vehicle is traveling below a predetermined speed, so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 25 and 9 percent, respectively, from 1967 and earlier light-duty vehicles.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before January 1, 1976, all light-duty vehicles of model years prior to 1968 reg-

istered in the area specified in paragraph (b) of this section are equipped with an appropriate vacuum spark advance disconnect retrofit device or other device, as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as a vacuum spark advance disconnect retrofit. No later than February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposed for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than January 1, 1976.

(4) A provision that starting no later than January 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved vacuum spark advance disconnect retrofit device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device assurance that the device is installed and operating correctly.

(e) After January 1, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After January 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that vacuum spark advance disconnect devices or other devices approved pursuant to this section are not commercially available.

§ 52.1097 Oxidizing catalyst retrofit—Baltimore.

(a) Definitions:

(1) "Oxidizing catalyst" means a device that uses a catalyst installed in the exhaust system of a vehicle (and if necessary, includes an air pump) so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide of at least 50 and 50 percent, respectively, from light-duty vehicles of 1971-1975 model years and of least 50 and 50 percent, respectively, from medium-duty vehicles of 1971-1975 model years.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, all light-duty and medium-duty vehicles of model years 1971 through 1975 which are registered in the area specified in paragraph (b) of this section and are able to operate on 91 RON gasoline, are equipped with an appropriate oxidizing catalyst retrofit device or other device, as approved by the Administrator, that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an oxidizing catalyst retrofit device. No later than April 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided by § 52.1095 unless it has been first equipped with an approved oxidizing catalyst device, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit device have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) Any vehicle which is manufactured equipped with an oxidizing catalyst, or which is certified to meet the original 1975 light-duty vehicle emission standards set forth in section 202(b)(1)(A) of the Clean Air Act of 1970 (without regard to any suspension of such standards), shall be exempt from the requirements of this section.

§ 52.1098 Light-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air-Fuel control retrofit" means a system or device such as modification to the engine's carburetor or positive crankcase ventilation system) that results in en-

gine operation at an increased air-fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbons and carbon monoxide of at least 25 and 40 percent, respectively, from 1968 through 1971 model year light-duty vehicles.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before August 1, 1976, all light-duty vehicles of 1968-1971 model years which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52-1097, which are registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an air/fuel control device. No later than February 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than August 1, 1976.

(4) A provision that starting no later than August 1, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After August 1, 1976, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After August 1, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicle from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control devices or other

devices approved pursuant to this section are not commercially available.

§ 52.1099 Medium-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/fuel control retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system) that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbons and carbon monoxide of at least 15 and 30 percent, respectively, from 1973 and earlier medium-duty vehicles.

(2) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1976, all medium-duty vehicles of model years prior to 1974 which are not required to be retrofitted with an oxidizing catalyst or other approved device pursuant to § 52.1097, which are registered in the area specified in paragraph (b) of this section, are equipped with an appropriate air/fuel control device or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide to the same extent as an air/fuel control device. No later than February 1, 1974, State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the test of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the State shall evaluate and approve devices for use in this program. Such date shall be no later than September 30, 1974.

(d) No later than April 1. 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluating and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by August 1, 1975, and completing the installation of the devices on all vehicles subject to this section no later than May 31, 1976.

(4) A provision that beginning no later than May 31, 1976, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those persons installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1976, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1976, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control devices or other devices approved pursuant to this section are not commercially available.

§ 52.1100 Heavy-duty air/fuel control retrofit.

(a) Definitions:

(1) "Air/fuel control retrofit" means a system or device (such as modification to the engine's carburetor or positive crankcase ventilation system, that results in engine operation at an increased air/fuel ratio so as to achieve reduction in exhaust emissions of hydrocarbon and carbon monoxide from heavy-duty vehicles of at least 30 and 40 percent, respectively.

(2) "Heavy-duty vehicles" means a gasoline-powered motor vehicle rated at 10,000 lb gross vehicle weight (GVW) or more.

(3) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish a retrofit program to ensure that on or before May 31, 1977, all heavy-duty vehicles registered in the area specified in paragraph (b) of this section are equipped with an appropriate air/fuel control retrofit or other device as approved by the Administrator that will reduce exhaust emissions of hydrocarbons and carbon monoxide at least to the same extent as an air/fuel control retrofit. No later than April 1, 1974, the State of Maryland shall submit to the Administrator a detailed compliance schedule showing the steps it will take to establish and enforce a retrofit program pursuant to this section, including the text of statutory proposals, regulations, and enforcement procedures that the State proposes for adoption. The compliance schedule shall also include a date by which the

State shall evaluate and approve devices for use in this program. Such date shall be no later than January 1, 1975.

(d) No later than September 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Designation of an agency responsible for evaluation and approving devices for use on vehicles subject to this section.

(2) Designation of an agency responsible for ensuring that the provisions of subparagraph (3) of this paragraph are enforced.

(3) Provisions for beginning the installation of the retrofit devices by January 1, 1976, and completing the installation of the device on all vehicles subject to this section no later than May 31, 1977.

(4) A provision that starting no later than May 31, 1977, no vehicle for which retrofit is required under this section shall pass the annual emission tests provided for by § 52.1095 unless it has been first equipped with an approved air/fuel control retrofit, or other device approved pursuant to this section, which the test has shown to be installed and operating correctly. The regulations shall include test procedures and failure criteria for implementing this provision.

(5) Methods and procedures for ensuring that those installing the retrofit devices have the training and ability to perform the needed tasks satisfactorily and have an adequate supply of retrofit components.

(6) Provision (apart from the requirements of any general program for periodic inspection and maintenance of vehicles) for emissions testing at the time of device installation or some other positive assurance that the device is installed and operating correctly.

(e) After May 31, 1977, the State shall not register or allow to operate on its streets or highways any vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (d) of this section.

(f) After May 31, 1977, no owner of a vehicle subject to this section shall operate or allow the operation of any such vehicle that does not comply with the applicable standards and procedures implementing this section.

(g) The State may exempt any class or category of vehicles from this section which the State finds is rarely used on public streets and highways (such as classic or antique vehicles) or for which the State demonstrates to the Administrator that air/fuel control retrofits or other devices approved pursuant to this section are not commercially available.

§ 52.1101 Gasoline transfer vapor control.

(a) Definitions:

(1) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) No person shall transfer gasoline from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless the displaced vapors from the storage container are processed by a system that prevents release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors displaced from the stationary container location.

(1) The vapor recovery portion of the system shall include one or more of the following:

(i) A vapor-tight return line from the storage container to the delivery vessel and a system that will ensure that the vapor return line is connected before gasoline can be transferred into the container.

(ii) Refrigeration-condensation system or equivalent designed to recover no less than 90 percent by weight of the organic compounds in the displaced vapor.

(2) If a "vapor-tight vapor return" system is used to meet the requirements of this section, the system shall be so constructed as to be readily adapted to retrofit with an adsorption system, refrigeration-condensation system, or equivalent vapor removal system, and so constructed as to anticipate compliance with § 52.1102 of this subpart.

(3) The vapor-laden delivery vessel shall be subject to the following conditions:

(i) The delivery vessel must be so designed and maintained as to be vapor-tight at all times.

(ii) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor recovery system or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling.

(iii) Gasoline storage compartments of 1,000 gallons or less in gasoline delivery vehicles presently in use on the promulgation date of this regulation will not be required to be retrofitted with a vapor return system until January 1, 1977.

(d) The provisions of paragraph (c) of this section shall not apply to the following:

(1) Stationary containers having a capacity less than 550 gallons used exclusively for the fueling of implements of husbandry.

(2) Any container having a capacity less than 2,000 gallons installed prior to promulgation of this section.

(3) Transfers made to storage tanks equipped with floating roofs or their equivalent.

(e) Every owner or operator of a stationary storage container or delivery vessel subject to this section shall comply with the following compliance schedule:

(1) *April 1 1974.* Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with the provisions of paragraph (c) of this section.

(2) *May 1, 1974.* Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) *January 1, 1975.* Initiate on-site construction or installation of emission control equipment.

(4) *February 1, 1976.* Complete on-site construction or installation of emission control equipment.

(5) *March 1, 1976.* Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(f) Paragraph (e) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator, by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after March 1, 1976. Any such schedule shall provide for certification to the Administrator within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy the requirements of this paragraph for the affected source.

(g) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (e) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by March 1, 1976, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after March 1, 1976,

shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.1102 Control of evaporative losses from the filling of vehicular tanks.

(a) Definitions:

(1) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) A person shall not transfer gasoline to an automotive fuel tank from a gasoline dispensing system unless the transfer is made through a fill nozzle designed to:

(1) Prevent discharge of hydrocarbon vapors to the atmosphere from either the vehicle filler neck or dispensing nozzle;

(2) Direct vapor displaced from the automotive fuel tank to a system wherein at least 90 percent by weight of the organic compounds in displaced vapors are recovered; and

(3) Prevent automotive fuel tank overfills or spillage on fill nozzle disconnect.

(d) The system referred to in paragraph (c) of this section can consist of a vapor-tight return line from the fill nozzle-filler neck interface to the dispensing tank or to an adsorption, absorption, incineration, refrigeration-condensation system or its equivalent.

(e) Components of the systems required by § 52.1101 (c) can be used for compliance with paragraph (c) of this section.

(f) If it is demonstrated to the satisfaction of the Administrator that it is impractical to comply with the provisions of paragraph (c) of this section as a result of vehicle fill neck configuration, location, or other design features of a class of vehicles, the provisions of this section shall not apply to such vehicles. However, in no case shall such configuration exempt any gasoline dispensing facility from installing and using in the most effective manner a system required by paragraph (c) of this section.

(g) Every owner or operator of a gasoline dispensing system subject to this section shall comply with the following compliance schedule.

(1) *April 1, 1974.* Submit to the Administrator a final control plan, which describes at a minimum the steps which will be taken by the source to achieve compliance with provisions of paragraph (c) of this section.

(2) *July 1, 1974.* Negotiate and sign all necessary contracts for emission control systems, or issue orders for the purchase of component parts to accomplish emission control.

(3) *January 1, 1975.* Initiate on-site construction or installation of emission control equipment.

(4) *May 1, 1977.* Complete on-site construction or installation of emission control equipment or process modification.

(5) *May 31, 1977.* Assure final compliance with the provisions of paragraph (c) of this section.

(6) Any owner or operator of sources subject to the compliance schedule in this paragraph shall certify to the Administrator, within 5 days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(h) Paragraph (g) of this section shall not apply:

(1) To a source which is presently in compliance with the provisions of paragraph (c) of this section and which has certified such compliance to the Administrator by January 31, 1974. The Administrator may request whatever supporting information he considers necessary for proper certification.

(2) To a source for which a compliance schedule is adopted by the State and approved by the Administrator.

(3) To a source whose owner or operator submits to the Administrator by January 31, 1974, a proposed alternative schedule. No such schedule may provide for compliance after May 31, 1977. Any such schedule shall provide for certification to the Administrator within 5 days after the deadline for each increment therein, as to whether or not that increment has been met. If promulgated by the Administrator, such schedule shall satisfy

the requirements of this paragraph for the affected source.

(i) Nothing in this section shall preclude the Administrator from promulgating a separate schedule for any source to which the application of the compliance schedule in paragraph (g) of this section fails to satisfy the requirements of § 51.15(b) and (c) of this chapter.

(j) Any gasoline dispensing facility subject to this section which installs a gasoline dispensing system after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977 and prior to that date shall comply with paragraph (g) of this section as far as possible. Any facility subject to this section which installs a gasoline dispensing system after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

§ 52.1104 Carpool Commuter Matching System.

(a) Definitions:

(1) "Carpool" means two or more persons utilizing the same vehicle.

(2) "Carpool matching" means assembling lists of commuters sharing similar travel needs and providing a mechanism by which persons on such lists may be put in contact with each other for the purpose of forming carpools.

(3) "Time-origin-destination (TOD) information" means information that identifies a commuter's work schedule, home and work location, or the location of other desired origins and destinations of trips (such as shopping or recreational trips).

(4) "Pilot program" means a program that is initiated on a limited basis for the purpose of facilitating a future full scale regional program.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR (the Region).

(c) Beginning June 1, 1975, the State of Maryland shall, unless exempted by the Administrator on the basis

of a finding that equivalent service is being or will be provided by some other public or private entity, establish a computer-aided carpool matching system which is conveniently available at least to all employees of employers within the Region who employ 100 or more employees. The system shall as soon as practicable, be made available to employees of smaller employers. No later than June 1, 1974, the State of Maryland shall submit to the Administrator a program, legally adopted (through regulation or statute) by and legally binding on the State, providing for such a system. The program shall include:

(1) A method of collecting information which will include the following as a minimum:

(i) Provisions for each affected employee to receive an application form with a cover letter describing the matching program.

(ii) Provisions on each application for applicant identification of his TOD information, and the applicant's desire to drive only, ride only, or share driving.

(2) A computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the Region and matching applicants with identical origin and destination grids and compatible work schedules.

(3) A method for providing continuing service so that the master list of all applicants is retained and available for use by new applicants, applications are currently available, and the master list is periodically, updated to remove applicants who have moved from the area served.

(4) An agency or agencies responsible for operating, overseeing and maintaining the carpool computer matching system.

(d) No later than January 1, 1975, a pilot program shall be initiated in the Region identified in paragraph (b) of this section in preparation for the full implementation required under paragraph (c) of this section.

§ 52.1105 Employee's provision for mass transit priority incentives.

(a) Definitions:

(1) "Employee parking space" means any parking space reserved or provided by an employer for the use of his employees.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR (the Region).

(c) Each employer in the Region who maintains more than 700 employee parking spaces shall, on or before February 1, 1974, submit to the Administrator an adequate transit incentive program designed to encourage the use of mass transit and discourage the use of single-passenger automobiles by his employees. This program may contain provisions for subsidies to employees who use mass transit, reductions in the number of employee parking spaces, or surcharges on the use of such spaces by employees, provision of special charter buses or other modes of mass transit for the use of employees, preferential parking and other benefits to employees who travel to work by carpool and/or any other measure acceptable to the Administrator. By April 1, 1974, the Administrator shall approve such program for each employer if he finds it to be adequate, and shall disapprove it if he finds it not to be adequate. Notice of such approval or disapproval will be published in this Part 52.

(d) In order to be approvable by the Administrator, such program shall contain procedures whereby the employer will supply the Administrator with semi-annual certified reports which shall show, at a minimum the following information:

(1) The number of employees at each of the employer's facilities within the Region on October 15, 1973, and as of the date of the report.

(2) The number of (i) free and (ii) non-free employee parking spaces provided by the employer at each such employment facility on October 15, 1973, and as of the date of the report.

(3) The number of employees regularly commuting to and from work by (i) private automobile, (ii) carpool, and (iii) mass transit at each such employment facility on October 15, 1973, and as of the date of the report.

(4) Such other information as the Administrator may prescribe.

(e) If, after the Administrator has approved a transit incentive program, the employer fails to submit any reports in full compliance with paragraph (d) of this section, or if the Administrator finds that any such report has been intentionally falsified, or if the Administrator determines that the program is not in operation or is not providing adequate incentives for employee use of carpools and mass transit, the Administrator may revoke the approval of such plan. Such revocation shall constitute a disapproval.

(f) By April 1, 1974, the Administrator shall prescribe a transit incentive program for each employer to whom paragraph (c) of this section is applicable if such employer has not submitted a program. By June 1, 1974, the Administrator shall prescribe a transit incentive program for each employer to whom paragraph (c) of this section is applicable if the program submitted is not adequate. Within two months after any revocation pursuant to paragraph (e) of this section, the Administrator shall prescribe a transit incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52.

(g) Each employer in the Region who maintains more than 70 employee parking spaces shall, on or before February 1, 1975, submit to the Administrator an adequate transit incentive program conforming to the requirements of paragraphs (c) and (d) of this section, except that in paragraph (d) of this section, the reference date of reports shall be October 15, 1974, rather than October 15, 1973. Each such program shall be subject to approval or disapproval by the Administrator by April 1, 1975. Each such program, when approved, shall be subject to revocation as provided in paragraph (e) of this section.

(h) By April 1, 1975, the Administrator shall prescribe a transit incentive program for each employer to which paragraph (g) of this section is applicable if such employer has not submitted a program. By June 1, 1975,

the Administrator shall prescribe a transit incentive program for each employer to which paragraph (g) of this section is applicable if the program submitted is not adequate. Within two months after any revocation of any program of any employer pursuant to paragraph (e) of this section, the Administrator shall prescribe a transit incentive program for the affected employer. Any program prescribed by the Administrator shall be published in this Part 52.

§ 52.1106 Study and establishment of bikeways in the Baltimore area.

(a) Definitions:

(1) "Baltimore CBD" is defined as the area in the City of Baltimore, Maryland, enclosed by, but not including, Centre Street, Fallsway, Falls Avenue, Pratt Street, Greene Street, Franklin Street, and Eutaw Street.

(b) This regulation is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall, according to the schedule set forth in paragraph (d) of this section, conduct a study of, and shall in that study recommend locations for exclusive bicycle lanes and bicycle parking facilities in the area described in paragraph (b) of this section. The study shall be made with a view toward maximum safety and security. The study shall include consideration of the physical designs for such lanes and parking facilities, and of rules of the road for bicyclists and, to the extent that present rules must be modified because of bicycle lanes, new rules of the road for motorists. In conducting the study, opportunity shall be given for public comments and suggestions. The study shall recommend as large a network of new CBD (and return) oriented commuter bicycle lanes and bicycle parking facilities as is practicable within the area described in paragraph (b) of this section and shall recommend physical designs for said lanes and facilities. The networks shall contain at least 15 miles of exclusive bicycle lanes in each direction.

(d) The State of Maryland shall submit to the Administrator no later than March 1, 1974, a detailed compliance schedule showing the steps that will be taken to carry out the study required by paragraph (c) of this section. The compliance schedule shall at a minimum include:

(1) Designation of the agency responsible for conducting the study.

(2) A date for initiation of the study which date shall be no later than May 1, 1974.

(3) A date for completion of the study, and submittal thereof to the Administrator, which date shall be no later than March 1, 1975.

(4) A detailed timetable describing the steps that must be taken and when these steps will be taken to ensure the timely submittal of any legislation needed to generally authorize establishment of bikeways and parking facilities in Maryland to the State legislature.

(e) On or before April 1, 1975, the Administrator shall submit to the State of Maryland his response to the study required by paragraph (c) of this section, and shall, in that response, either approve the route and parking facility location and designs recommended in the study, or shall designate alternative and/or additional route and parking facility locations and designs.

(f) The State of Maryland and such county and local jurisdictions as the State shall request to participate in the establishment of the networks (the State must request the participation of a county or local jurisdiction if the participation of that jurisdiction is necessary to the establishment of the lanes and other facilities required by this section) shall establish, according to the schedule set forth in the compliance schedule required by paragraph (g) of this section, bike lanes and parking facilities along the routes and in the locations approved or designated by the Administrator pursuant to paragraph (e) of this section.

(g) On or before June 1, 1975, the State of Maryland, and such county and local jurisdictions as the State has

requested to participate (and are, therefore, required to participate by paragraph (f) of this section) shall submit to the Administrator compliance schedules which shall show in detail the steps which each governmental entity will take to establish the bike lanes and parking facilities required by this section. The schedule must include as a minimum the following:

(1) Each lane and parking facility must be identified with a date set for its establishment.

(2) The design, security and safety features of each lane and parking facility must be precisely described and shown to be in accord with the designs approved or designated by the Administrator pursuant to paragraph (e) of this section.

(3) A date must be set for the initiation of lane and parking construction, which date shall be no later than September 1, 1975.

(4) A date must be set for completion of 50 percent of lane and parking construction, which date shall be no later than February 1, 1976.

(5) A date must be set for completion of 100 percent of lane and parking construction, which date shall be no later than May 31, 1976.

(6) Designations must be made of the agencies responsible for guaranteeing the establishment of the lanes and facilities in accordance with the Administrator's response to the State study.

(7) Signed statements of the chief executives of all jurisdictions involved in the establishment of the lanes and parking facilities required by this section, or their designees, must be submitted identifying the sources and amounts of funding for the programs required by this section, along with a timetable to ensure that proper funds will be available.

(h) No later than August 1, 1975, each governmental entity required by this section to establish bicycle lanes and/or parking facilities, shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

(i) Notwithstanding paragraph (c) of this section, if prior to the completion and submittal of the study required by paragraph (c) of this section, the State of Maryland has good and reasonable cause, through public comment or otherwise, to believe that the maximum practicable network of bicycle lanes will be less than 15 miles, in each direction, the State shall so notify the Administrator and shall obtain his concurrence or nonconcurrence, and shall conduct the remainder of the study to assure that the network of lanes shall be that mileage specified by the Administrator. Notice pursuant to this paragraph (i) shall be given no later than the beginning of the ninth month of the study.

§ 52.1107 Control of dry cleaning solvent evaporation.

(a) Definitions:

(1) "Dry cleaning operation" means that process by which an organic solvent is used in the commercial cleaning of garments and other fabric materials.

(2) "Organic solvents" means organic materials, including diluents and thinners, which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(3) "Photochemically reactive solvent" means any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, as applied to the total volume of solvent.

(i) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;

(ii) A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8 percent;

(iii) A combination of ethylbenzene or ketones having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

(b) This section is applicable to the Metropolitan Baltimore Intrastate AQCR.

(c) No person shall operate a dry cleaning operation using other than perchloroethylene, 1,1,1-trichloroethane, or saturated halogenated hydrocarbons unless the uncontrolled organic emissions from such operation are reduced at least 85 percent: *Provided*, That dry cleaning operations emitting less than 8 pounds per hour and less than 40 pounds per day of uncontrolled organic materials are exempt from the requirement of this section.

(d) If incineration is used as a control technique, 90 percent or more of the carbon in the organic emissions being incinerated must be oxidized to carbon dioxide.

(e) Any owner or operator of a source subject to this section shall achieve compliance with the requirements of paragraph (c) of this section by discontinuing the use of photochemically reactive solvents no later than May 31, 1974, or by controlling emissions as required by paragraphs (c) and (d) of this section by May 31, 1974.

§ 52.1108 Exclusive bus lanes for Baltimore suburbs and outlying areas.

(a) Definitions:

(1) "Carpool" means a vehicle containing three or more persons.

(2) "Bus/carpool lane" means a lane on a street or highway, which lane is open only to buses (or buses and carpools), whether constructed specially for that purpose or converted from existing lanes.

(3) "Baltimore CBD" means the area in the City of Baltimore, Maryland, enclosed by, but not including, Centre Street, Fallsway, Falls Avenue, Pratt Street, Greene Street, Franklin Street, and Eutaw Street.

(b) The State of Maryland and such county and local jurisdictions as the State may request to participate (the State must request the participation of a county or local jurisdiction by December 15, 1974, if the participation of that jurisdiction is necessary to the establishment of the lanes required by this section) shall establish, according to the schedule in paragraph (f) of this section, bus/carpool lanes along corridors connecting at least the following suburban or outlying areas (or alternative areas

if indicated in the study required by paragraph (c) of this section and approved by the Administrator) to the Baltimore CBD:

(1) Catonsville, Maryland
(2) Towson, Maryland
(3) Pikesville, Maryland
(4) Middle River and Essex, Maryland
(5) Overlea and Parkville, Maryland
(6) Halethorpe, Maryland
(7) Baynesville, Maryland
(8) Mount Washington section, Baltimore, Maryland
(9) Dundalk, Maryland
(10) Randallstown, Maryland
(11) Hunting Ridge section, Baltimore, Maryland
(12) Linthicum, Maryland
(13) Sparrows Point, Maryland

For each route either approved or designated by the Administrator pursuant to paragraph (d) of this section, except the route between the Baltimore CBD and Sparrows Point, at least one bus/carpool lane shall be established to serve traffic traveling toward the Baltimore CBD from 6:30 to 9:30 a.m. (or for a longer time), and at least one bus/carpool lane shall be established to serve traffic traveling toward the suburban or outlying areas from 3:30 to 6:30 p.m. (or for a longer time), Monday through Saturday. Along the route betwen the Baltimore CBD and Sparrows Point, Maryland, at least one bus/carpool lane shall be established to serve traffic traveling toward Sparrows Point from 6:30 to 9:30 a.m. (or for a longer time), and at least one bus/carpool lane shall be established to serve traffic traveling toward the Baltimore CBD from 3:30 to 6:30 p.m. (or for a longer time), Monday through Saturday.

(c) On or before November 1, 1974, the State of Maryland shall submit to the Administrator a study which shall contain for each of the corridors described in paragraph (b) of this section a detailed analysis showing every specific route location considered by the State for the corridor. The study shall designate one of the specific routes examined for each corridor as the most practicable route for that corridor. The study shall fully present the advantages and disadvantages of establishing the bus/carpool lanes provided for in paragraph (b) of this section along the most practicable route. For any corridor identified in this section along which the State concludes that bus/carpool lanes are not feasible, the State shall designate a replacement corridor connecting the Baltimore CBD and another significant source of CBD-bound traffic along which bus/carpool lanes are feasible. An analysis of the substituted corridor shall be included similar to the analysis of the original corridor, to show the most practicable route for said bus/carpool lanes.

(d) On or before December 1, 1974, the Administrator shall submit to the State of Maryland his response to the study required by paragraph (c) of this section, and shall in that response, either approve the routes selected by the State as most practicable and feasible for bus/carpool lanes, or shall designate alternative routes on which bus/carpool lanes must be established.

(e) On or before February 1, 1975, the State of Maryland and such county and local jurisdictions as the State has requested to participate (and are, therefore, required by paragraph (b) of this section to establish lanes) shall submit to the Administrator compliance schedules which shall show in detail the steps which each governmental entity will take to establish the bus/carpool lanes required by this section, and to enforce the limitations on their use. In the compliance schedule submitted pursuant to this paragraph a governmental entity may designate limited segments of lanes which may be entered briefly by vehicles, otherwise excluded from such lanes, for reasons of safety or sound traffic planning. Such exceptions shall be subject to the approval of the Administrator. Special circumstances justifying the need for such an exception (such as the desire to allow an exclusive lane to be entered briefly by automobiles for purposes of making a turn) must be set forth in detail.

(f) Bus/carpool lanes must be prominently indicated by distinctive painted lines, pylons, signs or physical

barriers. Twenty-five percent of the lane mileage for each of the governmental entities must be established and the needed signs installed by July 1, 1975; fifty percent by October 1, 1975; one hundred percent by January 1, 1976.

(g) A signed statement by the chief executive of each governmental entity establishing lanes, or his designee, shall be submitted to the Administrator no later than February 1, 1975, to identify the sources and amount of funds for all projects required by this section.

(h) No later than April 1, 1975, each governmental entity required by this section to establish lanes shall submit to the Administrator legally adopted regulations sufficient to implement and enforce all of the requirements of this section.

§ 52.1109 Regulation for limitation of public parking.

(a) Definitions:

(1) "On-street parking" means stopping a motor vehicle on any street, highway, or roadway (except for legal stops at or before intersections and as caution and safety require) whether or not a person remains in the vehicle.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) Beginning May 1, 1975, each appropriate governmental entity shall prohibit on-street parking, Monday through Saturday, on all streets and highways over which it has ownership or control and which contain exclusive bus or bus/carpool lanes pursuant to § 52.1108. The prohibition against on-street parking on any particular street or highway shall be only for the period during which such street or highway has a lane or lanes reserved for buses, and/or carpools. Momentary stopping for the pickup or discharge of passengers on exclusive bus or bus/carpool lanes at established passenger stops shall be permitted. No later than April 1, 1975, each governmental entity subject to the requirements of this section shall submit to the Administrator legally adopted regulations establishing such a prohibition program. At a minimum, such regulations must provide that vehicles

parked in violation of the prohibition shall be towed away and the owner shall be fined not less than $50 per violation.

(d) No later than February 1, 1975, governmental entities subject to this section shall submit to the Administrator detailed compliance schedules showing the steps they will take to establish and enforce the foregoing on-street parking limitation program, including statutory proposals and needed regulations that they will propose for adoption.

§ 52.1110 Gasoline limitations.

(a) Definitions:

(1) "Distributor" means any person or entity that transports, stores, or causes the transportation or storage of gasoline between any refinery and any retail outlet.

(2) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public, or introduced into any vehicle.

(b) This regulation is applicable in the Metropolitan Baltimore Intrastate AQCR (the Region) to all distributors of gasoline to any retail outlet in the Region, and to the owners and operators of all retail outlets in the Region.

(c) If the Administrator determines, on the basis of air quality monitoring in the Region, that the national ambient air quality standards for carbon monoxide and/or photochemical oxidants will not be attained in the Region by May 31, 1977, the Administrator shall implement a program, to be effective no later than May 31, 1977, limiting the total gallonage of gasoline delivered to retail outlets in the Region to that amount which, when combusted, will not result in the ambient air quality standards being exceeded.

(d) All distributors to which this section applies shall provide the Administrator with a detailed annual accounting of the amount of gasoline delivered to each retail outlet in the Region for calendar year 1976 and for each calendar year during which the gasoline limitation

program is in effect. The owner or operator of each retail outlet to which this section applies shall provide the Administrator with a detailed accounting of gasoline received from each distributor, the total amount of gasoline sold during the year, and the amount of gasoline on hand at the beginning and end of the year, for each year during which the gasoline limitation program is in effect. All accountings required by this section shall be provided no later than 90 days after the end of the applicable year. The Administrator may require any other report that he may deem necessary for the implementation of this section.

§ 52.1111 Management of parking supply.

(a) Definitions:

(1) "Parking facility" (also called "facility") means a lot, garage, building or structure, or combination or portion thereof, in or on which motor vehicles are temporarily parked.

(2) "Vehicle trip" means a single movement by a motor vehicle that originates or terminates at a parking facility.

(3) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land, a building or structure, or portion thereof, for use as a facility.

(4) "Modification" means any change to a parking facility that increases or may increase the motor vehicle capacity of or the motor vehicle activity associated with such parking facility.

(5) "Commence" means to undertake a continuous program of onsite construction or modification.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) The requirements of paragraphs (d) through (i) of this section are applicable to the following parking facilities in the area specified in paragraph (b) of this section, the construction or modification of which is commenced after August 15, 1973.

(1) Any new parking facility with parking capacity for 250 or more motor vehicles;

(2) Any parking facility that will be modified to increase parking capacity by 250 or more motor vehicles; and

(3) Any parking facility constructed or modified in increments which individually are not subject to review under paragraphs (c)(1) and/or (c)(2) of this section but which, when all such increments occurring since August 15, 1973, are added together, as a total would subject the facility to review under paragraphs (c)(1) and/or (c)(2) of this section.

(d) No person shall commence construction or modification of any facility subject to this section without first obtaining written approval from the Administrator or an agency designated by him; provided that this paragraph shall not apply to any proposed construction or modification for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(e) No approval to construct or modify a facility shall be granted unless the applicant shows to the satisfaction of the Administrator or an agency approved by him that:

(1) The design or operation of the facility will not cause a violation of the control strategy which is part of the applicable implementation plan and will be consistent with the plan's VMT reduction goals.

(2) The emissions resulting from the design or operation of the facility will not prevent or interfere with the attainment or maintenance of any national ambient air quality standard at any time within 10 years from the date of application.

(f) Except to the extent that the Administrator or agency designated by him may waive any such requirement in writing, all applications for approval under this section shall include the following information:

(1) Name and address of the applicant.

(2) Location and description of the parking facility.

(3) A proposed construction schedule.

(4) The normal hours of operation of the facility and the enterprises and activities that it serves.

(5) The total motor vehicle capacity before and after the construction or modification of the facility.

(6) The number of people using or engaging in any enterprises or activities that the facility will serve on a daily basis and a peak hour basis.

(7) A projection of the geographic areas in the community from which people and motor vehicles will be drawn to the facility. Such projection shall include data concerning the availability of mass transit from such areas.

(8) An estimate of the average and peak hour vehicle trip generation rates, before and after construction or modification of the facility.

(9) An estimate of the effect of the facility on traffic pattern and flow.

(10) An estimate of the effect of the facility on total VMT for the air quality control region.

(11) Additional information, plans, specifications, or documents as required by the Administrator.

(g) If the Administrator or agency designated by him specifically so requests, the application shall also include an analysis of the effect of the facility on site and regional air quality, including a showing that the facility will be compatible with the applicable implementation plan, and that the facility will not cause any national air quality standard to be exceeded within 10 years from the date of application. The Administrator may prescribe a standardized screening technique to be used in analyzing the effect of the facility on ambient air quality.

(h) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in accordance with applicable rules, regulations, permit conditions, and the design submitted in the application.

(i) Within 30 days after receipt of an application, the Administrator or agency approved by him shall notify the public, by prominent advertisement in the region

described in paragraph (b) of this section, of the receipt of the application and the proposed action on it (whether approval, conditional approval, or denial), and shall invite public comment.

(1) The application, all submitted information, and the terms of the proposed action shall be made available to the public in a readily accessible place within the area described in paragraph (b) of this section.

(2) Public comments submitted within 30 days of the date such information is made available shall be considered in making the final decision on the application.

(3) The Administrator or agency approved by him shall take final action (approval, conditional approval, or denial) on an application within 30 days after close of the public comment period.

(j) For any new parking facility with capacity for 50 to 249 motor vehicles, any facility which will be modified to increase parking capacity by 50 to 249 motor vehicles, and any facility constructed or modified in increments which individually are not subject to review under this paragraph, but which, when all such increments occurring since August 15, 1973 are added together, as a total would subject the facility to review under this paragraph, no person shall commence construction or modification without first furnishing to the Administrator or an agency designated by him, the information required by paragraphs (f)(1) through (f)(5) of this section. No approval will be required by the Administrator unless the determination specified in paragraph (k) of this section is made. This paragraph shall not apply to any proposed construction or modification for which a general construction contract was finally executed by all appropriate parties on or before August 15, 1973.

(k) If the Administrator, or an agency designated by him, determines, and gives prominent public notice of such determination, that construction of parking lots of 50 to 249 spaces (or modification of parking lots to add 50 to 249 spaces) in any geographical subdivision of the area specified in paragraph (b) of this section, is having or is likely to have a significant detrimental effect on the

control strategies in this transportation control plan or on air quality, he may require approval by him, or an agency designated by him, pursuant to the procedures in paragraph (d) through (i) of this section prior to construction of any additional such lots in such a subdivision. The Administrator shall approve an application unless he determines that the facility to be constructed would, either in itself or when viewed as part of a pattern of development, have a significant adverse impact on the applicable transportation control strategy.

§ 52.112 Control and prohibition of sources of photochemically reactive organic materials.

(a) Definitions

(1) "Standard Industrial Classification Major Group" shall mean that classification and major group assigned to an industry and published in the Standard Industrial Classification Manual, 1972, Executive Office of the President, Office of Management and Budget, Statistical Policy Division, Washington, D.C., 1972.

(2) "Photochemically Reactive Organic Materials" shall include any of the following:

(i) Hydrocarbons, alcohols, aldehydes, esters, or ketones, any of which has an olefinic or cyclo-olefinic type unsaturation,

(ii) Aromatic compounds with seven (7) or more carbon atoms,

(iii) Ketones having branched hydrocarbon structure,

(iv) Motor vehicle fuel with a true vapor pressure greater than 1.5 psia at 78° F,

(v) Organic solvents which have been in direct contact with flame in the presence of oxygen,

(vi) Compounds emitted from a process in which organic solvents are baked, heat cured, or heat polymerized in the presence of oxygen.

(b) This section is applicable in the Metropolitan Baltimore Intrastate AQCR.

(c) No person shall, after December 12, 1973, construct any source, or group of sources of the same Standard Industrial Classification Major Group owned or operated by the same person in the area designated in paragraph (b) of this section, which after complying with all other applicable provisions of the implementation plan for the Metropolitan Baltimore Intrastate Region (as approved and promulgated pursuant to Section 110 of the Clean Air Act of 1970), will discharge to the atmosphere more than 550 lbs. per day of photochemically reactive organic materials.

(d) No person shall, after December 12, 1973, cause, suffer, allow, or permit an increase in the average daily emissions of photochemically reactive organic material from any existing source, or group of sources, subject to the provisions of subsection .04J of 10.03.38 of the State of Maryland "Regulations Governing the Control of Air Pollution in Area III", which source, or group of sources, emits more than 550 pounds per day of photochemically reactive organic materials.

(e) Specifically exempted from the requirements of paragraph (c) of this section is new construction associated with the relocation or replacement of existing facilities subject to the provisions of subsection .04J of 10.03.38 of the State of Maryland "Regulations Governing the Control of Air Pollution in Area III", provided that emissions from said new construction will not exceed those allowed from existing facilities by paragraph (d) of this section.

[FR Doc. 73-26037 Filed 12-11-73; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Transportation Control Plan

Correction

In FR Doc. 73-23577 appearing at page 31232 in the issue for Monday, November 12, 1973, several paragraphs were inadvertently omitted from the first column on page 31234. As corrected the entire first column reads as set forth below.

Whether the National Ambient Air Quality Standard (NAAQS) for oxidant of 0.08 parts per million (ppm) for a 1-hour averaging time is an appropriate standard; and (2) if a socially disruptive measure such as extensive gasoline rationing is required to meet the NAAQS's for oxidant and carbon monoxide by 1977, whether the attainment date should be delayed beyond 1977.

The EPA, as required by the Clean Air Act, continuously reviews the medical basis for the NAAQS's. It is the Administrator's determination that to comply with the meaning of the Clean Air Act—that is, to protect public health with an adequate margin of safety—the 0.08 ppm standard for photochemical oxidant is a sound standard.

With regard to the second question, it is not within the authority of the EPA at the time of promulgation of this plan to extend attainment of the NAAQS's beyond 1977. The Clean Air Act specifically provides for no extension beyond 1977 for attainment of the standards unless the Governor of the State requests one under section 110(f) of the Act and shows in a formal hearing that there is no practical way to achieve the standards by 1977. In

that case, a further extension of no more than 1 year may be granted in appropriate circumstances.

Land use planning. Many persons who submitted either oral or written testimony on the proposed transportation control plans voiced strong support for land use policies that adequately take into account the environmental effects of proposed land use decisions. In particular, the subjects of urban sprawl and growth-inducing highway construction were commented upon repeatedly.

The Environmental Protection Agency believes that appropriate land use policies are the most effective means of protecting the environment, particularly over the long term.

Many land use decisions made today represent virtually irretrievable commitments of land and resources, and are often made without sufficient information on the environmental or social results of these decisions. Indeed, industries that were expected to expand the tax base have sometimes cost more to service than the amount of revenues they produced. These decisions, made in isolation from one another and in ignorance of their full effects (including the effects on air quality), have created much of the urban sprawl that has led to the need for transportation control plans. Many experts believe that the sprawling, low-density development patterns, which are fostered and accommodated by dependence on the automobile as the major form of transportation, are unduly wasteful of land, energy, and other resources, and have contributed to the decay of central cities. Comprehensive land use planning that takes air quality into account can eliminate the need for many such controls through placement of sources, proximity of employment and residential centers, and provision for mass transit and other measures.

Regulations that require land-use planning tied to air quality considerations were recently promulgated by EPA in response to a court order (38 FR 15834, June 18, 1973). These "indirect source" guidelines required each State to submit to EPA appropriate review proce-

dures, both long term and short term, to ensure the maintenance of the NAAQS in the future. The State of California has not submitted such review procedures to the EPA, although it is developing them. The Administrator has, therefore, proposed Federal regulations for the review of "indirect sources." These regulations will require the review for effect on air quality of all new large parking facilities, highways, airports, housing developments, and other development and/or construction that may increase automobile emissions because of increased vehicular travel.

The State of California Air Resources Board, under the direction of State Senate Bill 981, is developing an indirect source review procedure. The EPA believes that the review of indirect sources should be at the State and local level. Consequently, when the State submits an approvable procedure, the EPA will rescind any duplicating EPA regulations.

Review of new highway construction. Many comments were received on the continued construction of new highways. Urban sprawl is often precipitated by significant highway construction. Section 109(j) of the Federal Aid Highway Act, as amended, 23 U.S.C. 109(j), requires that any new Federally aided highways must be consistent with applicable implementation plans under the Clean Air Act. The "indirect sources" regulations or the State measures that regulations or the State measures that * * *.

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DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

* * * *

TITLE I—SHORT TITLE, PURPOSES, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "District of Columbia Self-Government and Governmental Reorganization Act".

STATEMENT OF PURPOSES

SEC. 102. (a) Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government, to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, in the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this act is accepted or rejected by the registered qualified electors of the District of Columbia.

DEFINITIONS

SEC. 103. For the purposes of this Act—

(1) The term "District" means the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia provided for by part A of title IV.

(3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by part A of title IV.

(6) The term "Mayor" means the Mayor provided for by part B of title IV.

(7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.

(8) The term "capital project" means (A) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (B) the acquisition of property of a permanent nature; or (C) the purchase of equipment for any public betterment or improvement when first erected or acquired.

(9) The term "pending", when applied to any capital project, means authorized but not yet completed.

(10) The term "District revenues" means all funds derived from taxes, fees, charges, and miscellaneous receipts, including all annual Federal payments to the District authorized by law, and from the sale of bonds.

(11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.

(12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term "District of Columbia courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term "resources" means revenues, balances, revolving funds, funds realized from borrowing, and the District share of Federal grant programs.

(15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures.

TITLE II—GOVERNMENTAL REORGANIZATION

REDEVELOPMENT LAND AGENCY

SEC. 201. The District of Columbia Redevelopment Act of 1946 (D.C. Code, secs. 5-701—5-719) is amended as follows:

(a) Subsection (a) of section 4 of such Act (D.C. Code, sec. 5-703(a)) is amended to read as follows:

"(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of five members appointed by the Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner'), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the 'Council'). The Commissioner shall name one member as chairman. No more than two members may be officers of the District of Columbia government. Each member shall serve for a term of five years except that of the members first appointed under this section, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years, as designated by the Commissioner. The terms of the members first appointed under this section shall begin on or after January 2,

1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in this Agency shall be appointed to serve for the remainder of the term during which such vacancy arose. Any member who holds no other salaried public position shall receive compensation at the rate of $100 for each day such member is engaged in the actual performance of duties vested in the agency."

(b) Subsection (b) of section 4 of such Act (D.C. Code, sec. 5-703(b)) is amended—

(1) by inserting after "forth" at the end of the first sentence of such section ", except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the board of directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c), as is deemed necessary and appropriate", and

(2) by striking out in the second sentence "including the selection of its chairman and other officers," and inserting in lieu thereof "including the selection of officers other than its chairman,".

(c) Section 4 of such Act is amended by adding at the end thereof the following new subsection:

"(c) The Council is authorized, by act, to adopt legislation—

"(1) establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

"(2) providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-

cash grant-in-aid to the project under title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor.

"(3) providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

"(4) providing that the Commissioner shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a non-cash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development.".

(d) The first sentence of subsection (b) of section 5 of such Act (D.C. Code, sec. 5-704(b)) is amended to read as follows "Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of chapter 13 of title 16 of the District of Columbia Code".

(e) None of the amendments contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547).

(f) For the purposes of subsection 713(d), employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columiba as of the effective date of this title without a break in service.

NATIONAL CAPITAL HOUSING AUTHORITY

SEC. 202. (a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under the District of Columbia Alley Dwelling Act (D.C.

Code, secs. 5-103—5-116) shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 404(b) and 422(12) of this Act.

(b) All functions, powers, and duties of the President under the District of Columbia Alley Dwelling Act shall be vested in and exercised by the Commissioner. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government.

NATIONAL CAPITAL PLANNING COMMISSION AND MUNICIPAL PLANNING

SEC. 203. (a) Subsections (a) and (b) of section 2 of the Act entitled "An Act providing for a comprehensive development of the park and playground system of the National Capital", approved June 6, 1924 (D.C. Code, sec. 1-1002), are amended to read as follows:

"(a)(1) The National Capital Planning Commission (hereinafter referred to as the 'Commission') is created as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

"(2) The Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner') shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the 'District') in the National Capital. The Commissioner shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan

for the National Capital, which may include, land use elements, urban renewal and redevelopment elements, a multiyear program of public works for the District, and physical, social, economic, transportation, and population elements. The Commissioner's planning responsibility shall not extend to Federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Commissioner shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

"(3) The Commissioner shall submit each District element of the comprehensive plan and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the Federal Establishment in the National Capital.

"(4)(A) The Commission shall, within sixty days after receipt of such a District element of the comprehensive plan or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the interests or functions of the Federal Establishment in the National Capital. If within such sixty days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incor-

porated into the comprehensive plan for the National Capital and shall be implemented.

"(B) If the Commission finds, within such sixty days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may—

"(i) reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or

"(ii) accept such findings and recommendations and modify such element or amendment accordingly. If the Council accepts such findings and recommendations and modifies such element or amendment under clause (ii), the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within thirty days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such thirty days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the Federal Establishment in the National Capital such element or amendment shall not be implemented.

"(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (i), the Commission shall, within sixty days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the Federal Establishment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or

amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such sixty days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determed to have a negative impact on the Federal Establishment in the National Capital, and which is submitted again in a modified form not less than one year from the day it was last rejected by the Commission shall be deemed to be a new element or amendment for purposes of the review procedure specified in this section.

"(D) The Commission and the Commissioner shall jointly publish from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the Federal activities in the National Capital developed by the Commission, and the District elements developed by the Commissioner and the Council in accordance with the provisions of this section.

"(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

"(F) The Commission and the Commissioner shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

"(b) The National Capital Planning Commission shall be composed of—

"(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Commissioner, the Chairman of the District of Columbia Council, and the chairmen of the Committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead and in addition,

"(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the Presi-

dent and two of whom shall be appointed by the Commissioner. The citizen members appointed by the Commissioner shall be bona fide residents of the District of Columbia and of the three appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for six years, except that of the members first appointed, the President shall designate one to serve two years and one to serve four years. Members appointed by the Commissioner shall serve for four years. The members first appointed under this section shall assume their office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of $100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties".

(b) Subsection (e) of section 2 of such Act of June 6, 1924 (D.C. Code, sec. 1-1002(e)), is amended by (1) inserting "Federal activities in the" immediately before "National Capital" in clause (1); and (2) striking out "and District Governments," and inserting in lieu thereof "government" in clause (2).

(c) Section 4 of such Act of June 6, 1924 (D.C. Code, sec. 1-1004), is amended as follows:

(1) The first sentence of subsection (a) of such section is amended to read as follows: "The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change".

(2) The third sentence of subsection (a) of such section is amended by striking out "within the District of Columbia" and "or District".

(3) Subsections (b) and (c) of such section are repealed.

(d) Section 5 of such Act of June 6, 1924 (D.C. Code, sec. 1-1005), is amended as follows:

(1) Subsection (c) of such section is amended to read as follows:

"(c) The provisions of section 16 of the Act approved June 20, 1938 (D.C. Code, sec. 5-428), are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within thirty days after the day it was submitted to the Commission".

(2) The first and second sentences of subsection (e) of such section are amended to read as follows: "It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the Federal Government which are responsible for public developments and projects, including the acquisition of lands. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal activities in the National Capital region.".

(e) Section 6 of such Act (D.C. Code, sec. 1-1006) is repealed.

(f) Section 7 of such Act (D.C. Code, sec. 1-1007) is amended to read as follows:

"SEC. 7. (a) The Commission shall recommend a six-year program of public works projects for the Federal Government which it shall review annually with the agencies concerned. To this end, each Federal agency shall submit to the Commission in the first quarter of

each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

"(b) The Commissioner shall submit to the Commission, by February 1 of each year, a copy of the multiyear capital improvements plan for the District developed by him under section 444 of the District of Columbia Self-Government and Governmental Reorganization Act. The Commission shall have thirty days within which to comment upon such plan but shall have no authority to change or disapprove of such plan."

(g) The first sentence of subsection (a) of section 8 of such Act of June 6, 1924 (D.C. Code, sec. 1-1008(a)), is amended to read as follows: "The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided in section 5 of the Act of March 1, 1920 (D.C. Code, sec. 5-417), on proposed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital."

DISTRICT OF COLUMBIA MANPOWER ADMINISTRATION

SEC. 204. (a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Commissioner. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally.

(b) The Commissioner is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary

powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a).

(c)(1) Section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a)), is amended by striking out "to maintain a public employment service for the District of Columbia".

(2) Section 3(b) of such Act (29 U.S.C. 49b(b) is amended by inserting "the District of Columbia," immediately after "Guam,".

(d) All functions of the Secretary and of the Director of Apprenticeship under the Act entitled "An Act to provide for voluntary apprenticeship in the District of Columbia", approved May 20, 1946 (D.C. Code, secs. 36-121—36-123), are transferred to and shall be exercised by the Commissioner. The office of Director of Apprenticeship provided for in section 3 of such Act (D.C. Code, sec. 36-123) is abolished.

(e) All functions of the Secretary under chapter 31 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the Government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner.

(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all

the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(h) The first section of the Act of August 16, 1937 (29 U.S.C. 50 et seq.) (relating to the welfare of apprentices), is amended by inserting at the end thereof "For the purposes of this Act the term 'State' shall include the District of Columbia.". (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(1), 88 Stat. 793.)

TITLE III—DISTRICT CHARTER PREAMBLE LEGISLATIVE POWER, AND CHARTER AMENDING PROCEDURE

DISTRICT CHARTER PREAMBLE

SEC. 301. The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto.

LEGISLATIVE POWER

SEC. 302. Except as provided in sections 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States.

CHARTER AMENDING PROCEDURE

SEC. 303. (a) The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a), and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered qualified electors shall take effect only if within thirty-five calendar days (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) of the date such amendment was submitted to the Congress both Houses of Congress adopt a concurrent resolution, according to the procedures specified in section 604 of this Act, approving such amendment.

(c) The Board of Elections shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a).

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603.

TITLE IV—THE DISTRICT CHARTER

PART A—THE COUNCIL

Subpart 1—Creation of the Council

CREATION AND MEMBERSHIP

SEC. 401. (a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b)(1) The Council established under subsection (a) shall consist of thirteen members elected on a partisan

basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under the District of Columbia Election Act. The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after the effective date of this title, not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after the effective date of this title, the Chairman and two members elected at-large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d) (1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in such ward to fill such vacancy on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of E[illegible]ions determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the office of Mayor, and if the Chairman becomes a candidate for the office of Mayor to fill such vacancy, the office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections can hold a special election to fill such vacancy, and such special election shall be held on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs unless the Board of Elections determines that such vacancy could be more practicably filled in a special election held on

the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise be held under the provision of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly nonaffiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(2), 88 Stat. 793.)

QUALIFICATIONS FOR HOLDING OFFICE

SEC. 402. No person shall hold the office of member of the Council, including the office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held, and (d) holds no public office (other than his employment in and position as a member of the Council), for

which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a Reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 403(c).

COMPENSATION

SEC. 403. (a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, $10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith.

POWERS OF THE COUNCIL

SEC. 404. (a) Subject to the limitations specified in title VI of this Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 602(c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602(c). If, within thirty calendar days after an act has been timely returned by the Mayor

to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall be transmitted by the Chairman to the President of the United States. Subject to the provisions of section 602(c), such act, except any act of the Council submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], shall become law at the end of the thirty day period beginning on the date of such transmission, unless during such period the President disapproves such act.

(f) In the case of any budget act adopted by the Council pursuant to section 446 of this Act and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States.

Subpart 2—Organization and Procedure of the Council

THE CHAIRMAN

SEC. 411. (a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council.

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

SEC. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

INVESTIGATIONS BY THE COUNCIL

SEC. 413. (a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of

witnesses and the production of books, papers, and other evidence. For such a purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpenas and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpena issued, or to testify, in a case pending before such Court.

PART B—THE MAYOR

ELECTION, QUALIFICATIONS, VACANCY, AND COMPENSATION

SEC. 421. (a) There is established the office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor established by subsection (a) shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c) (1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held, and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serv-

ing as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be

increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council.

POWERS AND DUTIES

SEC. 422. The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Numbered 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding the effective date of section 711(a) of this Act, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall,

until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex-officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to the effective date of section 711(a) of this Act, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3).

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 714(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the

Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act. The District government merit system shall take effect not earlier than one year nor later than five years after the effective date of this section.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 731) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not to exceed level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States Government legislation or other action dealing with any subject whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization.

MUNICIPAL PLANNING

SEC. 423. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a,

193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by an aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto, to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto, to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the Federal Establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the Federal Establishment as determined in the manner provided by Act of Congress.

PART C—THE JUDICIARY

JUDICIAL POWERS

SEC. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdic-

tion of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d) (1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e), Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e) (3) (A) shall serve for five years; of the members first selected in accordance with subsection (e) (3) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e) (3) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e) (3) (D) shall serve for six years;

and the member first appointed in accordance with subsection (e) (3) (E) shall serve for six years. In making the respective first appointments according to subsections (e) (3) (B) and (e) (3) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e) (1) No person may be appointed to the Tenure Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to his appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202 [1] of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D)) is not an officer or employee of the judicial branch of the United States, or

[1] So in original. Probably should be section "102".

an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner is [2] which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both or whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(2) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

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[2] So in original. Probably should be "in".

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432.

REMOVAL, SUSPENSION, AND INVOLUNTARY RETIREMENT

SEC. 432. (a) (1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c) (1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a) (1) which has not become final, or

(ii) the filing of an order of removal under subsection (a) (2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

NOMINATION AND APPOINTMENT OF JUDGES

SEC. 433. (a) Except as provided in section 434(d)(1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from

the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

SEC. 434. (a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such member shall serve for terms of six years, except that the member selected in accordance with subsection (b) (4) (A) shall serve for five years; of the

members first selected in accordance with subsection (b) (4) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b) (4) (C), one member shall serve for five years; the member first selected in accordance with subsection (b) (4) (D) shall serve for six years; and the member first appointed in accordance with subsection (b) (4) (E) shall serve for six years. In making the respective first appointments according to subsections (b) (4) (B) and (b) (4) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to his appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202 [1] of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

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[1] So in original. Probably should be section "102".

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures [sic] not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and

facilities as may be necessary to enable the Commission properly to perform its function. Information so furnished shall be treated by the Commission as privileged and confidential.

(d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within thirty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than thirty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that his recomendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433.

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

FISCAL YEAR

SEC. 441. The fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(3), 88 Stat. 793.)

SUBMISSION OF ANNUAL BUDGET

SEC. 442. (a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include—

(1) the budget for the forthcoming fiscal year in such detail as the Mayor determines necesary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash-outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources:

(2) an annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) a multiyear plan for all agencies of the District government as required under section 443;

(4) a multiyear capital improvements plan for all agencies of the District government as required under section 444;

(5) a program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) an issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) a summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, and the Commission on Judicial Disabilities and Tenure.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justification, including reasons for their omission from the annual budget. Whenever such proposed supplemental

or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures.

MULTIYEAR PLAN

SEC. 443. The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying—

(1) future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) the effects of current and proposed capital projects on future operating budget requirements;

(5) revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) the specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) the actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) total debt service payments in each fiscal year in which debt service payments must be made for all bonds

which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 444; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 603(b).

MULTIYEAR CAPITAL IMPROVEMENTS PLAN

SEC. 444. The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include—

(1) the status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditures will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) an analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 423 of this Act;

(3) identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) appropriate maps or other graphics.

DISTRICT OF COLUMBIA COURTS' BUDGET

SEC. 445. The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures

and appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 446 and 603(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States.

ENACTMENT OF APPROPRIATIONS BY CONGRESS

SEC. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act.

CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS

SEC. 447. The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

FINANCIAL DUTIES OF THE MAYOR

SEC. 448. Subject to the limitations in section 603, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

(A) full disclosure of the financial results of the District government's activities,

(B) adequate financial information needed by the District government for management purposes,

(C) effective control over and accountability for all funds, property, and other assets,

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) submit to the Council, by November 1 of each fiscal year, a complete financial statement and report for the preceeding fiscal year;

(5) supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) supervise and be responsible for the levying and collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any court, agency, or instrumentality of the District;

(7) have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration or exchange; and

(9) apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

ACCOUNTING SUPERVISION AND CONTROL

SEC. 449. The Mayor shall—

(a) prescribe the forms or receipts, vouchers, bills and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(b) examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(c) audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(d) perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

GENERAL AND SPECIAL FUNDS

SEC. 450. The general fund of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the general fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund.

CONTRACTS EXTENDING BEYOND ONE YEAR

SEC. 451. No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council.

ANNUAL BUDGET FOR THE BOARD OF EDUCATION

SEC. 452. With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education.

Subpart 2—Audit

DISTRICT OF COLUMBIA AUDITOR

SEC. 455. (a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due

regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports.

PART E—BORROWING

Subpart 1—Borrowing

DISTRICT'S AUTHORITY TO ISSUE AND REDEEM GENERAL OBLIGATION BONDS FOR CAPITAL PROJECTS

SEC. 461. (a) Subject to the limitations in section 603 (b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest,

payable annually or semi-annually, at such rate and at such maturities as the Mayor, subject to the provisions of section 462 of this Act, may from time to time determine to be necessary to make such bonds marketable.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

CONTENTS OF BORROWING LEGISLATION

SEC. 462. The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 461. Such an act shall contain, at least, provisions—

(1) briefly describing each project to be financed by the act;

(2) identifying the Act authorizing each such project;

(3) setting forth the maximum amount of the principal of the indebtedness which may be incurred for each such project;

(4) setting forth the maximum rate of interest to be paid on such indebtedness;

(5) setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and

(6) setting forth, in the event that the Council determines in its discretion, to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(4), 88 Stat. 793.)

PUBLICATION OF BORROWING LEGISLATION

SEC. 463. The Mayor shall publish any act authorizing the issuance of general obligation bonds at least once within five days after the enactment thereof, together

with a notice of the enactment thereof in substantially the following form:

"NOTICE

"The following act (published herewith) authorizing the issuance of general obligation bonds, has become effective. The time within which a suit, action, or proceeding questioning the validity of such bonds can be commenced, will expire twenty days from the date of the first publication of this notice, as provided in the District of Columbia Self-Government and Governmental Reorganization Act.

"_____ _____,
"Mayor."

SHORT PERIOD OF LIMITATION

SEC. 464. At the end of the twenty-day period beginning on the date of publication of the notice of the enactment of an act authorizing the issuance of general obligation bonds without the submission of the proposition for the issuance thereof to the qualified voters, or upon the expiration of twenty days from the date of publication of the promulgation of the results of an election upon the proposition of issuing bonds, as the case may be—

(1) any recitals or statements of fact contained in such act or in the preambles or the titles thereof or in the results of the election of any proceedings in connection with the calling, holding, or conducting of election upon the issuance of such bonds shall be deemed to be true for the purpose of determining the validity of the bonds thereby authorized, and the District and all others interested shall thereafter be estopped from denying same;

(2) such act and all proceedings in connection with the authorization of the issuance of such bonds shall be conclusively presumed to have been duly and regularly taken, passed, and done by the District and the Board of Elections in full compliance with the provisions of this Act and of all laws applicable thereto; and

(3) the validity of such act and said proceedings shall not thereafter be questioned by either a party plaintiff or a party defendant, and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of same, except in a suit, action, or proceeding commenced prior to the expiration of such twenty-day period.

ACTS FOR ISSUANCE OF GENERAL OBLIGATION BONDS

SEC. 465. At the end of the twenty-day period specified in section 464, the Mayor may issue general obligation bonds as authorized pursuant to the provisions of sections 461 to 465. An issue of general obligation bonds is hereby defined to be all or any part of an aggregate principal amount of bonds authorized pursuant to such sections, but no indebtedness shall be deemed to have been incurred within the meaning of this Act until such bonds have been sold, delivered, and paid for, and then only to the extent of the principal amount of such bonds so sold and delivered. The bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years from such date. The amount of said issues to be payable in each year shall be so fixed that when the annual interest is added to the principal amount payable in each year, the total amount payable either serially or to a sinking fund shall be substantially equal. It shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest so payable during each fiscal year during the term of the general obligation bonds does not exceed 3 per centum of the total authorized amount of such series. Such bonds and coupons may be executed by the facsimile signatures of the officer designated by the act authorizing such bonds, to sign the bonds, within the exception that at least one signature shall be manual. Such bonds may be issued in coupon form in the denomination of $1,000, or $1,000 and $5,000, registerable as to principal only or as to both principal and interest, and if registered as to both principal and interest may be issuable in denominations of multiples of $1,000. Such bonds and the interest thereon may be payable at such place or places within or without the District as the Council may determine. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(5), 88 Stat. 793.)

PUBLIC SALE

SEC. 466. All general obligation bonds issued under this part shall be sold at public sale upon sealed proposals after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a downpayment a certified check or cashier's check for an amount equal to at least 2 per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(6), 88 Stat. 793.)

Subpart 2—Short-Term Borrowing

BORROWING TO MEET APPROPRIATIONS

SEC. 471. In the absence of unappropriated available revenues to meet appropriations made pursuant to section 446, the Council may by act authorize the issuance of negotiable notes, in a total amount not to exceed 2 per centum of the total appropriations for the current fiscal year, each of which may be renewed from time to time, but all such notes and renewals thereof shall be paid not later than the close of the fiscal year following that in which such act becomes effective.

BORROWING IN ANTICIPATION OF REVENUES

SEC. 472. For any fiscal year, in anticipation of the collection or receipt of revenues of that fiscal year, the Council may by act authorize the borrowing of money by the execution of negotiable notes of the District, not to exceed in the aggregate at any time outstanding 20 per centum of the total anticipated revenue, each of which shall be designated "Revenue Note for the Fiscal Year 19—". Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year for which the original notes have been issued.

NOTES REDEEMABLE PRIOR TO MATURITY

SEC. 473. No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note.

SALES OF NOTES

SEC. 474. All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising.

Subpart 3—Payment of Bonds and Notes

SPECIAL TAX

SEC. 481. (a) The act of the Council authorizing the issuance of general obligation bonds pursuant to this title, shall, where necessary, provide for the levy annually of a special tax or charge without limitation as to rate or amount in amounts which, together with other revenues of the District available and applicable for said purposes, will be sufficient to pay the principal of and interest on such bonds and the premium, if any, upon the redemption thereof, as the same respectively become

due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected shall be set aside in a sinking fund and irrevocably dedicated to the payment of such principal, interest, and premium.

(b) The full faith and credit of the District shall be and is hereby pledged for the payment of the principal of and the interest on all general obligation bonds and notes of the District hereafter issued pursuant to subparts 1, 2, and 3 of part E of this title whether or not such pledge be stated in such bonds or notes or in the act authorizing the issuance thereof.

(c) (1) As soon as practicable following the beginning of each fiscal year, the Mayor shall review the amounts of District revenues which have been set aside and deposited in a sinking fund as provided in subsection (a). Such review shall be carried out with a view to determining whether the amounts so set aside and deposited are sufficient to pay the principal of and interest on general obligation bonds issued pursuant to this title, and the premium (if any) upon the redemption thereof, as the same respectively become due and payable. To the extent that the Mayor determines that sufficient District revenues have not been so set aside and deposited, the Federal payment made for the fiscal year within which such review is conducted shall be first utilized to make up any deficit in such sinking fund.

(2) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in the sinking fund.

Subpart 4—Tax Exemption; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

TAX EXEMPTION

SEC. 485. Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all Federal and District taxation except estate, inheritance, and gift taxes.

LEGAL INVESTMENT

SEC. 486. Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, States, or political subdivisions thereof. All Federal building and loan associations and Federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment.

WATER POLLUTION

SEC. 487. (a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those States. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 603(b).

(b) The Mayor shall enter into agreements with the States and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

COST OF RESERVOIRS ON POTOMAC RIVER

SEC. 488. (a) The Mayor is authorized to contract with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of it tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the

District under contracts authorized by this Act which are equitably attributable to such use outside the District.

DISTRICT'S CONTRIBUTIONS TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 489. Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in the National Capital Transportation Act of 1969 (83 Stat. 320) [D.C. Code, sec. 1-1441 et seq.], may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title.

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490. (a) The Council may by act issue revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance or assist in the financing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, and industrial and commercial development. Such bonds, notes, or other obligations shall be fully negotiable and payable, as to both principal and interest, solely from and secured solely by a pledge of the revenues realized from the property, facilities, developments, and improvements whose financing is undertaken by the issuance of such bonds, notes, or other obligations, including existing facilities to which such new facilities and improvements are related, which financing may be efected through loans made directly or indirectly (including the purchase of mortgages, in those cases described in subsection (b) of this section, notes, or other securities) to any public, quasi-public, or private corporation, partnership, association, person, or other legal entity.

(b) Except in the case of housing, recreation, commercial and industrial development, the property, facilities, developments, and improvements being financed may not be mortgaged as additional security for bonds, notes, or other obligations, but in no event shall any property

owned by the District of Columbia or the United States be mortgaged for the purpose of this section.

(c) Any and all such bonds, notes, or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as contained in section 602(a)(2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any such act may contain provisions—

(1) briefly describing the purpose for which such bond, note, or other obligation is to be issued;

(2) identifying the Act authorizing such purpose;

(3) prescribing the form, terms, provisions, manner or method of issuing and selling (including negotiated as well as competitive bid sale), and the time of issuance, of such bonds, notes, or other obligations; and

(4) prescribing any and all other details with respect to any such bonds, notes, or other obligations and the issuance and sale thereof.

The act may authorize and empower the Mayor to do any and all things necessary, proper, or expedient in connection with the issuance and sale of such notes, bonds, or other obligations authorized to be issued under the provisions of this section.

PART F—INDEPENDENT AGENCIES

BOARD OF ELECTIONS

SEC. 491. Section 3 of the District of Columbia Elections Act (D.C. Code, sec. 1-1103) is amended to read as follows:

"SEC. 3. (a) There is created a District of Columbia Board of Elections (hereafter in this section referred to

as the 'Board'), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this Act. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

"(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he is filling.

"(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

"(d) The Mayor shall, from time to time, designate the Chairman of the Board."

ZONING COMMISSION

SEC. 492. (a) The first section of the Act of March 1, 1920 (D.C. Code, sec. 5-412) is amended to read as follows: "That (a) to protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and three members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of four years, except of the members first appointed under this section—

"(1) one member shall serve for a term of two years, as determined by the Mayor;

"(2) one member shall serve for a term of three years, as determined by the Mayor; and

"(3) one member shall serve for a term of four years, as determined by the Mayor.

"(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

"(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

"(d) The Chairman of the Zoning Commission shall be selected by the members.

"(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law."

(b) The Act of June 20, 1938 (D.C. Code, sec. 5-413, et seq.) is amended as follows:

(1) The first sentence of section 2 of such Act (D.C. Code, sec. 5-414) is amended by striking out "Such regulations shall be made in accordance with a comprehensive plan and" and inserting in lieu thereof "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be".

(2) Section 5 of such Act (D.C. Code, sec. 5-417) is amended to read as follows:

"SEC. 5. (a) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission—

"(1) has held a public hearing, after notice, on such proposed regulation. map, or amendment; and

"(2) after such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review. If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within thirty days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

"(b) The notice required by clause (1) of subsection (a) shall be published at least thirty days prior to such public hearing and shall include a statement as to the

time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

"(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it."

PUBLIC SERVICE COMMISSION

SEC. 493. (a) There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.

(b) Paragraph 97(a) of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-201), is amended as follows:

(1) The first sentence of such paragraph is amended to read as follows: "The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor, by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978."

(2) The third sentence of such paragraph is repealed.

(3) The sixth sentence of such paragraph is amended to read as follows: "No Commissioner shall, during his term of office, hold any other public office.".

(4) The seventh sentence of such paragraph is amended by deleting "The Commissioners of the District of Columbia" and inserting in lieu thereof "The Mayor".

(5) The eighth sentence of such paragraph is amended to read as follows: "No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period.".

(Amended Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.)

ARMORY BOARD

SEC. 494. The first sentence of section 2 of the Act of June 4, 1948 (D.C. Code, sec. 2-1702), is amended to read as follows: "There is established an Armory Board, to be composed of the commanding general of the District of Columbia Militia, and two other members appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The members appointed by the Mayor shall each serve for a term of four years beginning on the date such member qualifies.".

BOARD OF EDUCATION

SEC. 495. The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under the District of Columbia Election Act. The election of the members of the Board of Education shall be conducted on a non-partisan basis and in accordance with such Act.

TITLE V—FEDERAL PAYMENT

DUTIES OF THE MAYOR, COUNCIL, AND FEDERAL OFFICE OF MANAGEMENT AND BUDGET

SEC. 501. (a) It shall be the duty of the Mayor in preparing an annual budget for the government of the District to develop meaningful intercity expenditure and revenue comparisons based on data supplied by the Bureau of the Census, and to identify elements of cost and benefits to the District which result from the unusual role of the District as the Nation's Capital. The results of the studies conducted by the Mayor under this subsection shall be made available to the Council and to the Federal Office of Management and Budget for their use in reviewing and revising the Mayor's request with respect to the level of the appropriation for the annual Federal payment to the District. Such Federal payment should operate to encourage efforts on the part of the government of the District to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Mayor, in studying and identifying the costs and benefits to the District brought about by its role as the Nation's Capital, should to the extent feasible among other elements, consider—

(1) revenues unobtainable because of the relative lack of taxable commercial and industrial property;

(2) revenues unobtainable because of the relative lack of taxable business income;

(3) potential revenues that would be realized if exemptions from District taxes were eliminated;

(4) net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to tax-exempt nonprofit organizations and corporate offices doing business only with the Federal Government;

(5) recurring and nonrecurring costs of unreimbursed services to the Federal Government;

(6) other expenditure reqirements placed on the District by the Federal Government which are unique to the District;

(7) benefits of Federal grants-in-aid relative to aid given other States and local governments;

(8) recurring and nonrecurring costs of unreimbursed services rendered the District by the Federal Government; and

(9) relative tax burden on District residents compared to that of residents in other jurisdictions in the Washington, District of Columbia, metropolitan area and in other cities of comparable size.

(c) The Mayor shall submit his request, with respect to the amount of an annual Federal payment, to the Council. The Council shall by act approve, disapprove, or modify the Mayor's request. After the action of the Council, the Mayor shall, by December 1 of each calendar year, in accordance with the provisions in the Budget and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual Federal payment shall be submitted to the President seven months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual Federal payment for the next following fiscal year.

AUTHORIZATION OF APPROPRIATIONS

SEC. 502. Notwithstanding any other provision of law, there is authorized to be appropriated as the annual Federal payment to the District of Columbia for the fiscal year ending June 30, 1975, the sum of $230,000,000; for

the fiscal year ending June 30, 1976, the sum of $254,000,000; for the fiscal year ending September 30, 1977, the sum of $280,000,000; for the fiscal year ending September 30, 1978, and for each fiscal year thereafter, the sum of $300,000,000. For the period July 1, 1976, through September 30, 1976, there is authorized to be appropriated a Federal payment of $70,000,000. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(7), 88 Stat. 793.)

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

RETENTION OF CONSTITUTIONAL AUTHORITY

SEC. 601. Notwithstanding any other provision of the Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

LIMITATIONS ON THE COUNCIL

SEC. 602. (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States;

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947) [D.C. Code, sec. 47-1551c];

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405), and in effect on the date of enactment of this Act;

(7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Ac-

counting Act, 1921 [31 U.S.C. 1 et seq.], any act which the Council determines according to section 412(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in the 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the Persident, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization and appropriation of the total budget of the District of Columbia government.

(b) (1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 2501, title 47 of the District of Columbia Code, as amended.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), and obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) The Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a Federal payment amount not to exceed the amount authorized by Congress. In determining whether any such budget would result in expenditures so being made in excess of such resources, amounts included in the budget estimates of the District of Columbia courts in excess of the recommendations of the Council shall not be applicable.

(d) The Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provisions of subsection 603(c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act.

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the ——approves/disapproves of the action of the District of Columbia Council describes as follows: ——— .", the blank spaces therein being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar

days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House

of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

TITLE VII—REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART A—CHARTER REFERENDUM

REFERENDUM

SEC. 701. On a date to be fixed by the Board of Elections,[1] not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth as title IV of this Act.

BOARD OF ELECTIONS AUTHORITY

SEC. 702. (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provisions of part E of title VII of this Act shall govern the Board of Elections in the performance of its duties under this Act.

REFERENDUM BALLOT AND NOTICE OF VOTING

SEC. 703. (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled:

"The District of Columbia Self-Government and Governmental Reorganization Act, enacted ———— [Dec. 24, 1973], proposes to establish a charter for the governance of the District of Columbia, but provides that the

[1] May 7, 1974.

charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

"☐ For the charter
"☐ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

"☐ For Advisory Neighborhood Councils
"☐ Against Advisory Neighborhood Councils".

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting. (Amended Apr. 24, 1974, Pub. L. 93-272, § 1, 88 Stat. 93.)

ACCEPTANCE OR NONACCEPTANCE OF CHARTER

SEC. 704. (a) If a majority of the registered qualified electors voting in the charter referendum vote for the

charter, the charter shall be considered accepted as of the time the Board of Elections certifies the result of the charter referendum to the President of the United States, as provided in subsection (b).

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the results of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

PART B—SUCCESSION IN GOVERNMENT

ABOLISHMENT OF EXISTING GOVERNMENT AND TRANSFER OF FUNCTIONS

SEC. 711. The District of Columbia Council, the offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan Numbered 3 of 1967, are abolished as of noon January 2, 1975. This subsection [1] shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore.

CERTAIN DELEGATED FUNCTIONS AND FUNCTIONS OF CERTAIN AGENCIES

SEC. 712. No function of the District of Columbia Council (established under Reorganization Plan Numbered 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967

[1] So in original. Probably should be "section".

in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

SEC. 713. (a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the

Mayor if such functions are transferred to him or to any other officer or agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service.

EXISTING STATUTES, REGULATIONS, AND OTHER ACTIONS

SEC. 714. (a) Any statute, regulation, or other action in respect of (and any regulation, or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a), the term "other action" includes without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

PENDING ACTIONS AND PROCEEDINGS

SEC. 715. (a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICERS OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

SEC. 716. Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711, abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner. shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it.

STATUS OF THE DISTRICT

SEC. 717. (a) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in section 2 of the Revised Statutes relating to the District (D.C. Code, sec. 1-102). Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner.

(b) No law or regulation which is in force on the effective date of title IV of this Act shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, nothwithstanding the provisions of section 752 of this Act, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part.

(c) Nothing contained in this section shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552) [D.C. Code, sec. 101 note].

CONTINUATION OF THE DISTRICT OF COLUMBIA COURT SYSTEM

SEC. 718. (a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 602(a)(4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of

such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts.

CONTINUATION OF THE BOARD OF EDUCATION

SEC. 719. The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education shall not be affected by the provisions of section 495. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member.

PART C—TEMPORARY PROVISIONS

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

SEC. 721. The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its functions under this Act.

REIMBURSABLE APPROPRIATIONS FOR THE DISTRICT

SEC. 722. (a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of $750,000, out of any money in the Treasury not otherwise appropriate, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV, from the general fund of the District.

INTERIM LOAN AUTHORITY

SEC. 723. (a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to the effective date of title IV. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [D.C. Code, sec. 1-1441 et seq.].

(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

(c) Subject to the limitations contained in section 603 (b), there are authorized to be appropriated such sums as may be necessary to make loans under this section.

POLITICAL PARTICIPATION IN CERTAIN ELECTIONS FIRST HELD UNDER THIS ACT

SEC. 724. (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed

by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment—

(1) from being a candidate in the first primary election and general election held under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act, and

(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate—

(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such primary election; and

(4) in the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such election.

(c) The provisions of this section shall terminate as of January 2, 1975. (Added Apr. 17, 1974, Pub. L. 93-268, § 3(a), 88 Stat. 86.)

PART D.—MISCELLANEOUS

AGREEMENTS WITH UNITED STATES

SEC. 731. (a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Govern-

ment pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code.

PERSONAL INTEREST IN CONTRACTS OR TRANSACTIONS

SEC. 732. Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position.

COMPENSATION FROM MORE THAN ONE SOURCE

SEC. 733. (a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position.

ASSISTANCE OF THE UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPMENT OF DISTRICT MERIT SYSTEM

SEC. 734. The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit sys-

tem or systems required by section 422(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of section 731 of this Act.

REVENUE SHARING RESTRICTIONS

SEC. 735. Section 141(c) of the State and Local Fiscal Assistance Act of 1972 (86 Stat. 919) [31 U.S.C. 1261] is amended to read as follows:

"(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

"(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

"(2) as a county area which has no units of local government (other than itself) within its geographic area.".

INDEPENDENT AUDIT

SEC. 736. (a) In addition to the audit carried out under section 455, the accounts and operations of the District government shall be audited annually by the General Accounting Office in accordance with such principles and procedures, and in such detail, and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or

property belonging to or in use by the District and necessary to facilitate the audit, and such representatives shall be afforded full facilities for auditing the accounts and operations of the District government.

(b) (1) The Comptroller General shall submit his audit reports to the Congress, the Mayor, and the Council. The reports shall set forth the scope of the audits and shall include such comments and information as the Comptroller General may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as the Comptroller General may deem advisable.

(2) After the Mayor has had an opportunity to be heard, the Council may make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(3) The Mayor, within ninety days after receipt of the audit from the Comptroller General, shall state in writing to the Council, with a copy to the Congress, what has been done to comply with the recommendations made by the Comptroller General in the report.

ADJUSTMENTS

SEC. 737. (a) Subject to section 731, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the Federal Government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section.

(c) Each officer and employee of the District required to do so by the Council shall provide a bond which [sic] such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District.

ADVISORY NEIGHBORHOOD COUNCILS

SEC. 738. (a) The Council shall by act divide the District into neighborhood council areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood council area, shall establish for that neighborhood an elected advisory neighborhood council. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood council shall be nonpartisan, shall be scheduled to coincide with the elections of members of the Board of Education held in the District, and shall be administered by the Board of Elections. Advisory neighborhood council members shall be elected from single member districts within each neighborhood council area by the registered qualified electors thereof.

(c) Each advisory neighborhood council—

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood council area;

(2) may employ staff and expand, for public purposes within its neighborhood council area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood council of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neigh-

borhood council area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood councils, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood council area, the District government shall apportion to each advisory neighborhood council, out of the revenue of the District received from the tax on real property in the District including improvements thereon, a sum not less than that part of such revenue raised by levying 1 cent per $100 of assessed valuation which bears the same ratio to the full sum raised thereby as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood councils.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood council and shall establish guidelines with respect to the employment of persons by each advisory neighborhood council which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood councils and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood council. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood councils established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act.

NATIONAL CAPITAL SERVICE AREA

SEC. 739. (a) There is established within the District of Columbia the National Capital Service Area which

shall include, subject to the following provisions of this section, the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f).

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) and particularly described in subsection (f), adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (f), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) Section 45 of the Act entitled "An Act to provide for the organization of the militia of the District of Columbia", approved March 1, 1889 (D.C. Code, sec. 39-603), is amended by inserting after "United States Marshal for the District of Columbia," the following: "or for the National Capital Service Director,".

(e) (1) Within one year after the effective date of this section, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f) (1) (A) The National Capital Service Area referred to in subsection (a) is more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to Eighteenth Street Northwest;

thence south on Eighteenth Street Northwest to Constitution Avenue Northwest;

thence east on Constitution Avenue to Seventeenth Street Northwest;

thence north on Seventeenth Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvaina Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to Fifteenth Street Northwest;

thence south on Fifteenth Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshal Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to Third Street Northwest;

thence north on Third Street Northwest to D Street Northwest;

thence east on D Street Northwest to Second Street Northwest;

thence south on Second Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to Second Street Northeast;

thence south on Second Street Northeast to D Street Northeast;

thence west on D Street Northeast to First Street Northeast;

thence south on First Street Northeast to Maryland Avenue Northeast;

thence generally north and east on Maryland Avenue to Second Street Northeast;

thence south on Second Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to Second Street Southwest;

thence south on Second Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to Third Street Southwest;

thence north on Third Street Southwest to C Street Southwest;

thence west on C Street Southwest to Sixth Street Southwest;

thence north on Sixth Street Southwest to Independence Avenue;

thence west on Independence Avenue to Twelfth Street Southwest;

thence south on Twelfth Street Southwest to D Street Southwest;

thence west on D Street Southwest to Fourteenth Street Southwest;

thence south on Fourteenth Street Southwest to the middle of the Washington Channel;

thence generally south and east along the midchannel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;

thence due east to the side of the Washington Channel;

thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River,

and along the northern shore at the mean high water mark to the northern most point of the Eleventh Street Bridge;

thence generally south and east along the northern side of the Eleventh Street Bridge to the eastern shore of the Anacostia River;

thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;

thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;

thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;

thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in paragraph (1) is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any Federal real property affronting or abutting, as of the date of the enactment of this Act [Dec. 24, 1973], the area described in paragraph (1) shall be deemed to be within such area.

(3) For the purposes of paragraph (2), Federal real property affronting or abutting such area described in paragraph (1) shall—

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to the date of the enactment of this Act, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the Eleventh Street Bridge, or any portion of the Rock Creek Park.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) Section 1 of the Act of July 31, 1946, as amended by the Act of October 20, 1967 (60 Stat. 718; 81 Stat. 275; 40 U.S.C. 193a) [D.C. Code, sec. 9-118], is hereby amended to include within the definition of the United States Capitol Grounds, the following streets: "Independence Avenue from the west curb of First Street S.E. to the east curb of First Street S.W., New Jersey Avenue S.E. from the south curb of Independence Avenue to the north curb of D Street S.E., South Capitol Street from the south curb of Independence Avenue to the north curb of D Street; Delaware Avenue S.W. from the south curb of C Street S.W. to the north curb of D Street S.W., C Street from the west curb of First Street S.E. to the intersection of First and Canal Streets, S.W., D Street from the west curb of First Street S.E. to the intersection of Canal Street and Delaware Avenue S.W., that

part of First Street lying west of the outer face of the curb of the sidewalk on the east side thereo from D Street, N.E. to D Street S.E., that part of First Street within the east and west curblines hereof exending from the north side of Pennsylvania Avenue N.W. to the intersection of C Street and Canal Street S.W., including the two circles within such area. Nothing in this section shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the effective date of title IV of this Act vesting authority in the United States Supreme Court police and Library of Congress police to make arrests in adjacent streets, including First Street N.E. and First Street S.E.".

(4) Section 9 of the Act of July 31, 1946, as amended (40 U.S.C. 212a) [D.C. Code, sec. 9-126], is amended by deleting "or of any State," and inserting in lieu thereof a comma and the following: "of the District of Columbia, or of any State,".

(5) Section 9 of such Act is further amended by deleting the following: ", with the exception of the streets and roadways shown on the map referred to in section 1 of this Act as being under the jurisdiction and control of the Commissioners of the District of Columbia".

(7) Section 1 of the Act of July 31, 1946, as amended (40 U.S.C. 193a) [D.C. Code, sec. 9-118], is amended by deleting ": *Provided*, That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further*," and inserting in lieu thereof a comma and the following: "including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Commissioner of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets

which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided,*".

(8) Section 9 of the Act of August 18, 1949, as amended (40 U.S.C. 13n), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia, or of any State,".

(9) Section 9 of the Act of August 4, 1950, as amended (2 U.S.C. 167h), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia or of any State,".

(b) (1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of the Act of July 31, 1946, as amended (40 U.S.C. 193a et seq.) [D.C. Code, sec. 9-118 et seq.], or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV

of this Act pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding such effective date, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under section 731 of this Act) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding the effective date of title IV of this Act with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other Federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act and which, on such date immediately preceding the effective date of such title, are applicable to and within the areas included within the National Capital

Service Area pursuant to this section shall, on and after such effective date, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area.

EMERGENCY CONTROL OF POLICE

SEC. 740. (a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairman and ranking minority Members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the adoption of a resolution by

either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of thirty days, unless the Senate and the House of Representatives approve a concurrent resolution authorizing such an extension.

HOLDING OFFICE IN THE DISTRICT

SEC. 741. [Repealed, Apr. 17, 1974. Pub. L. 93-268, § 4(c), 38 Stat. 87.]

OPEN MEETINGS

SEC. 742. (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost.

TERMINATION OF THE DISTRICT'S AUTHORITY TO BORROW FROM THE TREASURY

SEC. 743. (a) The first section of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City", approved June 6, 1958 (72 Stat. 183; D.C. Code, sec. 9-220), is amended by striking out subsections (b), (c), (d), and (e).

(b) The Act entitled "An Act authorizing loans from the United States Treasury for the expansion of the District of Columbia water system", approved June 2, 1950 (60 Stat. 195; D.C. Code, sec. 43-1540), is repealed.

(c) Title II of the Act entitled "An Act to authorize the financing of a program of public works construction for the District of Columbia, and for other purposes", approved May 18, 1954 (68 Stat. 108), is amended by striking out sections 213, 214, 216, 217, and 218 (D.C. Code, sections 43-1612, 43-1613, 43-1615, 43-1616, and 43-1617), authorizing loans from the United States Treasury for sanitary and combined sewer systems of the District.

(d) Section 402 of title IV of such Act approved May 18, 1954 (68 Sat. 110; D.C. Code, sec. 7-133), authorizing loans from the United States Treasury for the District of Columbia highway construction program, is repealed.

(e) Nothing contained in this section shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, nor to prevent the District from fulfilling the provisions of section 722.

PART E—AMENDMENTS TO THE DISTRICT OF COLUMBIA ELECTION ACT

AMENDMENTS

SEC. 751. The District of Columbia Election Act (D.C. Code, secs. 1-1101—1-1115) is amended as follows:

(1) The first section of such Act (D.C. Code, sec 1-1101) is amended by inserting immediately after "Board of Education,", the following: "the members of the Council of the District of Columbia, the Mayor".

(2) Section 2 of such Act (D.C. Code, sec. 1-1102) is amended by adding at the end thereof the following new paragraphs:

"(8) The term 'Council' or 'Council of the District of Columbia' means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

"(9) The term 'Mayor' means the office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act."

(3) Subsections (h), (i), (j), and (k) of section 8 of such Act (D.C. Code, sec. 1-1108) are amended to read as follows:

"(h)(1)(A) The Delegate, Mayor, Chairman of the District Council and the four at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the District Council, and at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

"(B)(1) A member of the office of Council (other than the Chairman and any member elected at large) shall

be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in clause (ii) of this paragraph.

"(i) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

"(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this Act. No political party shall be qualified to hold a primary election to select candidate for election to any such office in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

"(i) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered numbers of such political party, whichever is less, as shown by the record of the Board of Electors as of the one hundred fourteenth day before the date of such election.

"(2) Each individual in a primary election for candidate for the office of member of the Council (other than the Chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and

fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 7 of this Act, and who are of the same political party as the nominee.

"(3) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the one hundred fourteenth day preceding the date of such election and may not be filed with the Board before the eighty-fifth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

"(j) (1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition (A) filed with the Board not less than sixty days before the date of such general election, and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by five hundred voters who are duly registered under section 7 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1½ per centum of the total number of registered voters in the District, as shown by the records of the Board as of one hundred fourteen days before the date of such election, or by three thousand persons duly registered under section 7, whichever is less. No signature on such a petition may be counted which have been made on such petition more than one hundred fourteen days before the date of such election.

"(2) Nominations under this subsection for candidates for election in a general election to any office referred to

in paragraph (1) shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within eight months before the date of such general election.

"(k)(1) In each general election for the office of member of Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 10(d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

"(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who (A) have been duly elected by any political party in the next preceding primary election for such office, (B) have been duly nominated to fill vacancies in such office pursuant to section 10(d), or (C) have been nominated directly as a candidate under subsection (j) of this section.

"(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any one of the candidates for any such office who (A) has been duly elected by any political party in the next preceding primary election for such office, (B) has been duly nominated to fill a vacancy in such office pursuant to section 10(d), or (C) has been nominated directly as a candidate under subsection (j) of this section".

(4) Paragraph (3) of section 10(a) of such Act (D.C. Code, sec. 1-1110) is amended (1) by inserting "(A)" immediately before the word "Except", and (2) by adding at the end thereof the following:

"(B) Except as otherwise provided in the case of special elections under this Act, primary election of each political party for the office or member of the Council shall be held on the first Tuesday after the second Monday in September in 1974, and every second year thereafter, and general election for such offices shall be held on the first Tuesday after the first Monday in November in 1974 and every second year thereafter.

"(C) Except as otherwise provided in the case of a special election under this Act, primary elections of each political party for the office of Mayor and Chairman shall be held on the first Tuesday after the second Monday in September of every fourth year, commencing with calendar year 1974, and the general election for such office shall be held on the first Tuesday after the first Monday in November in 1974 and every fourth year thereafter".

(5) Paragraphs (6), (7), (8), and (9) of section 10(a) of such Act (D.C. Code sec. 1-1110) are repealed, and paragraphs (4) and (5) of such section 10(a) are amended to read as follows:

"(4) With respect to special elections required or authorized by this Act, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this Act.

"(5) General elections for members of the Board of Eduction shall be held on the first Tuesday after the first Monday in November of each odd-numbered calendar year."

(6) Section 10(b) of such Act (D.C. Code, sec. 1-1110) is amended by striking out "other than general elections for the Office of Delegate and for members of the Board of Education.".

(7) Section 10(c) of such Act (D.C. Code, sec. 1-1110) is amended by striking out the words "other than an election for members of the Board of Education".

(8) Section 10(d) of such Act (D.C. Code, sec. 1-1110) is amended to read as follows:

"(d) In the event that any official, other than the Delegate, Mayor, member of the Council, member of the Board of Education, or a winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this Act dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this Act to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee, except that such successor shall have the qualifications required by this Act for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate, Mayor, or member of the Council who has been declared the winner in the preceding primary election of such office, the vacancy may be filed not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor. In the event that such a vacancy occurs in the office of Delegate more than eight months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office."

(9) The first sentence of section 15 of such Act (D.C. Code, sec. 1-1115) is amended to read as follows: "No person shall be a candidate for more than one office on Board of Education or the Council in any election for members of the Board of Education or Council, and no person shall be a candidate for more than one office on the Council in any primary election."

(10) Section 15 of such Act (D.C. Code, sec. 1-1115) is further amended (1) by designating the existing text of such section as subsection (a), and (2) by adding at the end thereof the following new subsection:

"(b) No person who is holding the office of Mayor, Delegate, Chairman or member of the Council or member of the School Board shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election, unless the term of the office

which he so holds expires on or prior to the date on which he would be eligible, if elected in such primary or general election, to take the office with respect to which such election is held."

DISTRICT COUNCIL AUTHORITY OVER ELECTIONS

SEC. 752. Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District.

PART F—RULES OF CONSTRUCTION

CONSTRUCTION

SEC. 761. To the extent that any provisions of this Act are inconsistent with the provisions of any other laws the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

PART G—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 771. (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act.

(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfers authority to appoint any citizen member of this National Capital Planning Commission or the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. (Amended Apr. 17, 1974, Pub. L. 93-268, § 3(c), 68 Stat. 87; Aug. 29, 1974, Pub. L. 93-395, § 1(8), 88 Stat. 793.)

Approved December 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

ADDITIONS AND REVISIONS TO PLAN SUBMITTED BY VIRGINIA FOR VIRGINIA PORTION OF NATIONAL CAPITAL INTERSTATE REGION, JULY 9, 1973 (EXCERPTS), RECORD IN NOS. 75-1050, 75-1055 AT PP. 4887-5306

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5. Dulles Access Road—Route 123—George Washington Parkway. (Fairfax and Arlington Counties—Reston and Vienna to Rosslyn)

Bus-only ramps to the Dulles Access Road for buses serving the Reston area are being provided at one interchange and will be opened in August, 1973.

NVTC's transit technical planning study (that is now underway) includes analysis of the Route 123-Lee Highway Corridor for the provision of bus priority movements. Preliminary results will be available in 1973, with final design to be performed in 1974, and implementation is scheduled for early 1975.

Measure 2: PROVIDE NEW AND EXPANDED BUS TRANSIT SERVICES. The enabling legislation creating NVTC, which represents the local governments in Northern Virginia in public transportation matters, authorizes it to contract for the provision of bus transit services. A Memorandum of Understanding (Reference 6) was executed between the Washington Metropolitan Area Transit Authority and NVTC (and other participating political subdivisions) on April 12, 1973, that provides for WMATA to operate such transit services as may be requested by NVTC, upon agreement that NVTC will pay the capital and operating costs of such services.

Work Plan

It is estimated that approximately *750 additional buses* * should be placed into service in the Washington Metropolitan area by May 31, 1975, to serve the transit travel demand that will result from the required decrease in use of the automobile for travel to and from work. Of these buses, it is estimated that about 300 will be needed for service in Northern Virginia. Placing this number of buses into service will require an extensive

* Vice 1300 buses proposed in Virginia's April 11, 1973 submission.

staff effort in the development and design of new routes and schedules as well as the provision of an additional garage and maintenance facility for the buses, in addition to the acquisition of new buses or retention of older buses (those in satisfactory condition but more than 14 years old) in service. See Table I. To assure meeting the 1975 bus requirements, it is proposed to retain all older buses in service beginning in 1974, rather than retire about 125 each year as originally planned in the WMATA Capital Grant Application to UMTA. This results in a net new bus requirement of about 200 buses by 1975 for the whole Metropolitan area, since bus service expansion plans, as outlined in the 5-year projection (Appendix G) contained in the Capital Grant Application, calls for the acquisition of about 150 new buses each year for the next several years. The estimated cost of these additional buses is shown on Table I.

TRANSIT PASSENGER SERVICE IMPROVEMENTS

Several methods and procedures will be used to improve the convenience of transit services to existing users and new riders attracted through decreased use of the automobile. Bus rider shelters, expanded public information, and additional fringe parking will be provided by the individual local governments in Northern Virginia, by NVTC, the State of Virginia, and through WMATA, both as part of the WMATA regular bus service program and by NVTC utilizing the provisions of the Memorandum of Understanding to provide additional services. Reference G.

Adequate working relationships exist, and no additional legislation or cooperative agreements are needed at this time.

Work Plan

The capital equipment program of WMATA calls for the installation of 200 *bus rider shelters* each year for the next five years. Of these, approximately 60 will be installed each year in Northern Virginia. The Virginia Department of Highways has allocated funds to install over 20 bus rider shelters along Lee Highway in 1973,

and has plans to provide a similar number along Arlington Boulevard in 1974. It is anticipated that additional shelters will be provided by the Virginia Department of Highways in subsequent years. Arlington County, Alexandria, and NVTC have installed about 10 shelters over the past year. It is proposed that NVTC expand this program to provide for the installation of 40 additional bus rider shelters each year.

Providing additional *public information* on the existing, new, and expanded bus transit services will be provided through expanded staff effort and increased funding for the development and distribution of information pamphlets and timetables on new routes, schedules, and locations to be served by the expanded public transportation. See Table I.

Expanded *fringe parking* will be initiated at shopping centers, churches, along service roads, and at other appropriate locations. The transit planning technical study now underway by NVTC is investigating locations along two broad corridors in Northern Virginia, and specific recommendations for new fringe parking sites will be available in 1973. Final arrangements for utilization of additional fringe parking sites will be completed and areas will be placed into service in 1974. Staff effort will be continued to locate and utilize additional sites in subsequent years. Estimated costs for additional guide signing, pavement marking, etc., are shown in Table I.

The NVTC transit planning technical study is investigating the feasibility of *dial-a-ride transit services* to augment and supplement regular-route bus transit services in three separate areas of Northern Virginia. Based on the results of this study, which is scheduled to be completed in 1973, appropriate dial-a-ride services will be implemented where recommended. Provision of these new services beginning in 1975, is anticipated. Estimated costs to place 15 new small-size buses in service are provided.

Stabilization of fares is one of the programs supported by NVTC to maintain and increase patronage of bus services. *Subsidies* to support a lowering and equalization of transit fares throughout Northern Virginia have re-

cently been approved by NVTC, and all the local governments in the Northern Virginia Transportation District have allocated funds to finance this program during FY 1974. Funds to support transit operating cost subsidies in subsequent years are expected to be made available from existing and new tax sources when needed. It is proposed that NVTC hold bus fares stable for two years, by utilization of public funding subsidies, and then have transit fares increase based on the consumer price index and the relative cost of travel by transit versus the automobile. NVTC is currently developing a position on which source of taxation is most appropriate as a source of revenue to support transit services, and *plans to request legislation authorizing such taxation at the 1974 Session of the Virginia General Assembly.* Additional legislation at the State and local government levels is required. The estimated operating deficit $3,000,000 per year anticipated to result from placing 300 additional buses in service to meet the air pollution reduction requirements is shown on Table I.

Measure 4—Increased Terminal Costs

The basic air pollution reduction strategy in the Washington Metropolitan area, and particularly in the Northern Virginia portion of the region, is to provide for travel during the peak periods by public transportation rather than to continue the predominant reliance upon the automobile. New and expanded bus services are the principal means proposed for accommodating the anticipated switch from travel by automobile. That is, considerably expanded and more convenient transit services will provide an *incentive* to increased utilization of public transportation and decreased utilization of the automobile.

However, an integral and inseparable part of increased utilization of public transportation is the initiation of *disincentives* to the continued predominate reliance upon the automobile for travel, especially during peak travel periods. Probably the most critical disincentive to continued usage of the automobile for work trips is the provision of increased parking costs and a decrease in

the supply of parking spaces in areas of high employment concentration. In other words, initiation of increased parking costs cannot be separated from the provision of expanded bus services if utilization of the new bus services is to increase to the point of reducing the air pollution resulting from current reliance upon the automobile to the levels necessary to meet the air quality standards for the Washington Metropolitan area.

LEGAL AUTHORITY

1. $3 million per year operating subsidies to be paid by NVTC member jurisdictions require taxation authority which will be requested from the 1974 General Assembly which meets on January 9, 1974. Prior to that date, NVTC, SAPCB, Secretary of Transportation, and Northern Virginia delegation members will consult and develop specific plans for dealing with cognizant legislative committees. No more precise "time table" or "milestones" can be stated. It is expected that requisite legal authority will be signed into law by May 31, 1974.

2. Legal authority to eliminate and enforce continued elimination of free parking is "not applicable". There are many ways public and private employers could circumvent this measure. It is not absolutely enforceable and depends largely on Federal (EPA/OMB) action to get it started and upon NVTC and community action to keep it going. A continuing hassel over free parking for senior military and government officials is anticipated.

3. Authority for Arlington Co. to impose the $2.00 parking surcharge will be requested from the 1974 General Assembly in the same manner as Item 1 above.

4. Legal authority and enforcement of the car pool locator service is "not applicable". This is a cooperative encouragement program and an administrative action. No laws are contemplated to require citizens to car pool, but with the provision of exclusive car/pool/bus priority lanes, the projected VMT reduction due to car pooling is a credible strategy.

RESOURCES:

As shown in Table IV, this plan requires in 1974 a $10 million grant from UMTA matched by $5 million in State funds. There is no way air pollution control authorities can prove to EPA that these funds will be allocated. It is clear, however, from recent public announcements that VDH is prepared to support mass transit improvements in Northern Virginia. Whether at this level or not depends on matters beyond the scope of this plan.

PROPOSED RULES AND REGULATIONS

Rules and Regulations for Bus Priority Lanes and Parking Restrictions are "not applicable". Regulation is achieved by posting signs. Violation of any posted traffic sign in Northern Virginia is a traffic offense under local ordinances.

TECHNICAL FEASIBILITY

Since the number of additional buses has been dropped from 1300 to 750, technical feasibility of procurement and expansion of labor and service facilities is no longer at issue.

ENFORCEMENT

In the event Arlington County refuses to enforce parking restrictions and the $2.00 surcharge, it is anticipated that Federal promulgation would be required to meet requirements of this plan and ensure uniformity with similar measures in the District of Columbia.

Through NVTC and the membership of local Virginia jurisdictions in the Metropolitan Washington Council of Government, reciprocal parking fine

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Measure 6—LDV Inspection-Maintenance

DISCUSSION: Emission surveillance studies recently performed for EPA show that controlled light duty vehicles ('68-71) are emitting pollutants at levels significantly higher than the standards for which they were factory-equipped. For example, tests of a fleet of '71 vehicles, stabilized, excluding Denver, showed 41% in excess of the model year HC standard and 51% in excess of the model year CO standard. 62% failed one or the other standard. As the Federal new car certification standards become more and more stringent, there is greater need than ever to adopt measures that will require car owners to maintain their emission control systems at or somewhere approaching designed performance levels. This is the purpose of LDV inspection-maintenance. Since Virginia has an existing Safety Inspection System, operating under the State Police with 3000 Statewide licensed stations, it is deamed most feasible to adopt and tie into it an ann[illegible] idle emission inspection test.

GOAL: Ensure that light duty vehicles comply with Federal emission standards.

EMISSIONS REDUCTION POTENTIAL AND MODEL INPUT: Regional model inputs were 90% of the effects shown App. N (38FR15197) on exhaust emissions only based on Virginia Idle Test at 30% rejection; D.C. and Maryland Loaded Test at 30% rejected. Emissions reduction: 1.2 tons HC in '77 and 28.1 tons CO in '77.

PROJECTED IMPACT ON AIR QUALITY: The above emissions reductions represent 9% of the required HC reduction and 40% of the required CO reduction to enable national standards to be attained in the NCI region in 1977.

TIME TO IMPLEMENT: Given approval and funding by the General Assembly during its next session commencing January 9, 1974, initiation of the system could be completed by July 1974 and the system could be fully functioning by January 1975. Cars with semi-annual safety stickers expiring in December 1974 would receive their first emissions test in June 1975, thus com-

pleting the first cycle by that date. Effectiveness of the strategy, however, depends upon the ability of the service industry to respond by training mechanics and technicians to perform the indicated maintenance actions. This effort will probably take two years or more to reach full effectiveness.

LOCATIONS AFFECTED: AQCR VII initially, extended to other regions of Virginia later.

TECHNICAL FEASIBILITY: NDIR exhaust gas analyzers at about $2000 each are available in quantity on the open market. No other equipment is needed. They are required by both the test and the maintenance facility, however.

INSTITUTIONAL FEASIBILITY: The greatest impediment is funding. If the State or Federal government were to finance a large share of the cost of each analyzer, the present safety inspection licensees would be more inclined to go along with the program. A direct outlay of $2000 may cause many of them to drop out. Surveys of the service industry in AQCR VII indicate that that industry is already heavily taxed with work and unable to expand its work force. Significant State funds will be required for training teams, equipment calibration teams, and program management. Federal grant funds under Section 210 of the Clean Air Act are authorized for up to two thirds of the cost of constructing and operating the system.

IMPLEMENTING AGENCY: The program will be set up by a Task Force made up of representatives from SAPCB, the State Police, and possibly a contractor. Continuing action will be the responsibility of the State Police, assisted by SAPCB in connection with adjustment of test standards and by DMV for statistical analysis.

LEGAL AUTHORITY: The 1974 General Assembly will be requested to amend the Motor Vehicle Code, Title 46.1 to establish requirements and define responsibilities. SAPCB will initiate this action.

ACTION REQUIRED: Passage of enabling legislation. Appropriation and release of funds. Establishing program Task Force. Training personnel. Initiating studies.

ENFORCEMENT: State and local police will enforce a sticker system in the same manner they now enforce safety inspection.

RELATIONSHIP TO OTHER STRATEGIES:

- Vehicle Turnover
- LDV Retrofit

EXPECTED COSTS TO IMPLEMENT:

DIRECT COSTS: Program start-up costs for one year will be about $670,000. For AQCR VII only, capital costs will be about $552,000 and annual costs to the State will be about $348,000. Safety inspection fees now $3.00 will be $6.00 for both safety and emissions test.

INDIRECT COSTS: Based on information developed by Carlson et al (Effectiveness of Short Emission Inspection Tests—APCA Paper #73-80, June 24, 1973) it is expected that idle test maintenance costs will be about $25.00 per serviced vehicle at 30% rejection rate.

STUDIES REQUIRED: EPA may establish the vehicle emission baseline upon which pre '72 vehicles will be tested. See EPA Region III letter of June 1, 1973 for plans in this connection. If this information is not developed prior to accumulation of data in Virginia AQCR VII starting in January 1975, the system effectiveness and citizen support will be adversely affected. Car owners must be convinced the rejections and out-of-pocket emission repairs are justifiable and based on sound data.

IMPLEMENTATION SCHEDULE:

Enabling legislation and funding—March 1974
Start-up State/County stations—July 1974
Start-up in whole region—January 1975
Complete first cycle—June 1975

SCOPE AND NATURE OF REQUIRED REGULATIONS: Section 4.710.00 of AQCR VII Regulations will be revised to include the initial test standards for each model year LDV. The Motor Vehicle Code (Section 46.1) will be revised by the General Assembly to establish time limits for repairs, fines, and procedures to safeguard car owners from unnecessary maintenance generated by mandatory emission testing.

TABLE I

ESTIMATED COSTS TO IMPLEMENT
IMPROVED PUBLIC TRANSPORTATION ELEMENTS

YEAR	MANPOWER NEEDS			ESTIMATED COSTS					
	Bus Lanes	More Buses	Passenger Services	Bus Lanes	More Buses	Passenger Services	Federal	State-Local	Total
1973	1	2	2	$ 12,500	$ 25,000	$ 25,000	$ 40,000	$ 22,500	$ 62,500
1974	1	5	3	1,025,000	15,100,000	340,000	10,725,000	5,740,000	16,465,000
1975	½	5	3½	310,000	500,000*	460,000	690,000	580,000	1,270,000
1976	½	3	3½	10,000	75,000*	460,000	225,000	320,000	545,000
1977	—	3	3	—	80,000*	460,000	220,000	320,000	540,000
Totals				$1,357,500	$15,780,000	$1,745,000	$11,900,000	$6,982,500	$18,882,500
									9,000,000
									$27,882,500

* Estimated deficit resulting from operation of 300 additional buses is about $3,000,000 per year beginning in 1975. (Requires enabling legislation from 1974 Gen. Assembly to enable local jurisdiction to acquire this sum by taxation)

PUBLIC HEARINGS ON TRANSPORTATION CONTROL PLANS FOR THE NATIONAL CAPITAL AREA, SEPTEMBER 6, 1973 (EXCERPTS), RECORD DOC. NO. 20 IN NOS. 75-1055 AT PP. 826-842

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[826] STATEMENT OF CLEATUS BARNETT, ACTING CHAIRMAN OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, ACCOMPANIED BY MATTHEW PLATT OF THE OFFICE OF PLANNING OF THE AUTHORITY.

MR. BARNETT: Thank you, Mr. Chairman.

I am Cleatur [sic] Barnett, Acting Chairman of the Washington Metropolitan Area Transit Authority. Accompanying me is Mr. Matthew Platt of the Office of Planning of the Authority.

The Washington Metropolitan Area Transit Authority is the operator and owner of the regional bus transit system and is building and will operate Metro, the future rail transit system in the Washington area of Washington, D.C.

We are pleased to appear today to pledge our cooperation and to endorse the broad regional effort to achieve a high quality of clean air throughout the area. [827] WMATA is committed to improve public transportation service in this region. By doing so, we believe we will contribute significantly to the control of air pollution.

We have ordered 620 new buses and plan to order an additional 650 over the next four years. These buses will be equipped with an Environmental Improvement Program (EIP) kit which will exceed the standards of the Federal Government and meet those of the State of California (which are even more rigid) with regard to emission of smoke, hydrocarbons, carbon monoxide and oxides of nitrogen.

The reduction of these emissions over the last few years has been largely due to the improvement of fuel injectors. Our new buses will be equipped with the C-55 fuel injector, only recently introduced and capable of providing further improvements in emission control. We also plan to equip our present buses with the new fuel injector.

You will be interested to know, I am sure, that our personnel are quite familiar with the experiments which led to these improved emission controls since the majority of the experiments were conducted on buses of D. C. Transit under a research project sponsored by the Washington Metropolitan Area Transit Commission and the Urban Mass Transportation Administration.

We are also surveying the existing bus properties to determine any other possible means of reducing air

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[829] acquire real estate and to design and build storage and maintenance facilities for the 750 additional buses proposed in the report.

Our experience with regard to such facilities for either rail or bus vehicles leads us to conclude that this will be an extremely slow and controversial process. The procurement of 750 additional buses will be a major undertaking requiring time.

The preparation of schedules to integrate those buses into the operative pattern will require almost a year's effort. Additional buses will require additional personnel, including operators and those who provide maintenance and administrative support. A training period for such personnel must be allowed.

There are strict procedures for the adoption of new or changed bus service or the deletion of such service. Those procedures require public hearings with due notice before such hearings and adequate time thereafter for additional comments and analyses. This, as is well known, is a time-consuming process.

Finally, we should like to direct some comments to the financial problems inherent in the recommendations. As shown in technical materials recently furnished us, it is estimated that the transit capital requirements would be $42.5 million, and the annual operating deficit $15.9 million

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[834] would be what?

MR. PLATT: The program called for increasing 25 buses for the second year and also 25 for the third year.

MR. FERRARI: It looks like we have had a break between your organization and the Transportation Board and our group as to exactly the number of buses to be purchased.

MR. PLATT: The 750 are over and above these increases. That is my understanding.

MR. FERRARI: Is this agreed upon by WMATA, to purchase these 750 buses?

MR. BARNETT: No, sir, the WMATA has not agreed to the 750 buses. It is agreeable to undertaking that assignment, but I don't think the board has the authority to itself undertake the program without the signatories to the Authority's compact approving the program and financially underwriting it, and it is a process we have had to go through before we reach the point where we can begin acquiring buses.

We are quite amenable to undertaking the assignment. In fact, we think it ought to be done. But as the Metro Board itself, we cannot just say we are going to do it and proceed to do it.

MR. FERRARI: I see. Thank you.

MR. MILNER: Mr. Shutler, if I may on the quantity of buses.

[835] Assuming that the Board okay's the 750 additional bus concept which you are indicating a favorable reaction to, and even assuming you don't keep some of those older ones that you had originally planned to retire, I come up with 120 plus 25 plus 25 for 1760 new buses.

Is it fair to assume that that 170 could be included in that 750 so that you are really talking about 750 less 170 really new buses that you hadn't originally planned for?

MR. BARNETT: I think we are going to get the 170 you refer to regardless of what happens. That is already programmed.

The 750 that the committee has made reference to is a new program and has not been endorsed by the proper authorities around the area.

MR. MILNER: All I am asking is if it were endorsed then one could conceive that it would be 750 less 170?

MR. BARNETT: I think the proper arithmetic would be 750 plus what we are already programming.

MR. MILNER: I see.

This ought to be clarified in my mind later in order to discuss it.

The other point I really want to make quickly was the routes, and in our critique, the original COG plan, we did ask for clear identification of the routes including [836] suburban location "A" to suburban location "B."

That is all I have.

MR. KOZLOWSKI: Mr. Barnett, can you tell me how many buses you have in your fleet now?

MR. BARNETT: 1800.

MR. KOZLOWSKI: 1800?

MR. BARNETT: Yes.

MR. KOZLOWSKI: How many would you have in 1975? All 1800 are operable? Plus 175?

MR. BARNETT: That is a question I can't answer off the top of my head without doing some computation. We have a retirement program and a—

MR. PLATT: The arithmetic I have is that we would have approximately 1970 buses operating. This does not take into account the possibility of not retiring some of those buses.

Now, we still are thinking of keeping some 130 of the better buses.

Now, of the 508 we were going to retire this year, approximately 130 are air conditioned of the newer type. We are thinking of keeping those.

We do also have a problem with storage. We can't immediately increase the fleet without providing additional storage. As Mr. Barnett indicated, that is a problem.

MR. KOZLOWSKI: Is it possible with the condition [837] the buses are in to not retire significantly more than the one hundred and so you are talking about? For example, 600?

MR. PLATT: Our present indication is that these buses should be retired.

MR. KOZLOWSKI: Let me ask a slightly related question, then.

If there is an increase in ridership in the peak periods of evening rush hours of, let's say, 10 to 15 percent, could you handle it with the current number of buses?

MR. PLATT: With the programmed increase, yes.

MR. KOZLOWSKI: So you would conclude, then—I want to get this straight—that you could handle a 15 percent reduction of traffic with your current fleet and your current projected increase in fleet?

MR. PLATT: That is approximately the figure.

MR. KOZLOWSKI: I would like to ask just for my own, I know with three jurisdictions the funding is probably complicated, but just how do you get funds for the buses?

MR. PLATT: The funds for our buses come from the UMTA program plus the local matching moneys. The present capital program of—for example, the 600 buses we are now acquiring, we were able to get two-thirds UMTA funding for those buses, one-third from the local jurisdictions. The local money was allocated among each of our local governments.

[838] We have in effect eight local governments. The two counties in Maryland, the District of Columbia, and five jurisdictions—two counties and three cities in Virginia are included in that, for a total of eight jurisdictions. Their share of the program was allocated among these jurisdictions and they have provided the money for this.

MR. KOZLOWSKI: How long does the funding process take? Let's assume, say, you decide you want 750 new buses. How long would it be before you could actually start buying these?

MR. BARNETT: Just as an estimate, I think it would probably take two to three months to go through the process of getting local approval—that is, all the participating local governments.

The federal government, you would be able to answer that better than I. Sometimes it moves along and other times they get lost in those applications.

DR. SHUTLER: What do you need from the federal government in this respect?

MR. BARNETT: We would need the feds to provide the two-thirds federal share that we have become accustomed to.

DR. SHUTLER: I see.

MR. BARNETT: I think it has been raised to 80 recently.

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[840] DR. SHUTLER: The bus purchases and retires through 1977, both planned and deemed possible, and by that the difference between those last two may include the difference between retirements.

MR. BARNETT: Part of that schedule is a little bit flabby, to be honest with you. The only thing firm about it is the new buses that are ordered. That is a firm program that is moving ahead.

How many of these old buses might be retained beyond their projected retirement date is a little soft, but we will try to get you as hard a figure as possible on that and submit it for the record.

DR. SHUTLER: Very good.

There is also some uncertainty as to just what the local jurisdictions, your signatories, have to do before you can get the approval. You said it would take two to three months to obtain it. Can you describe that, or would you prefer to submit something in writing for the record? Either way.

MR. BARNETT: I will try to describe it and supplement it with a statement for the record, if you would like.

A program has to originate somewhere, and a logical place for a program of this type to originate would be with the Metro as a focus for the bus operations. We would [841] prepare a program that we see as feasible and submit it to the jurisdictions for their financial—for their endorsement of the program and their financial support to follow.

If we get agreement all the way around the Beltway the program would go to the federal government for the

UMTA participation, and if that comes through we are ready to roll and we are ready then to prepare a program for bids for the manufacturer of the buses, for the operation of the buses after we get them.

DR. SHUTLER: Which organizations in the local jurisdictions do you have to obtain approval from? The board of county supervisors or the equivalent or what?

MR. BARNETT: In the District of Columbia it is primarily, I think—I am not an authority on the District organization's government—I think it is the D. C. City Council that deals with these matters.

In Maryland, it would be each of the two counties acting individually, Montgomery County and Prince George's County.

Over in Virginia it is the Northern Virginia Transportation Commission acting in the name of the five signatories over there. I think they further have a subprocess where they go to their five participating jurisdictions, but in the end they speak for all of them.

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

PUBLIC LAW 89-774; 80 STAT. 1324

[S. 3488]

An Act to grant the consent of Congress for the States of Virginia and Maryland and the District of Columbia to amend the Washington Metropolitan Area Transit Regulation Compact to establish an organization empowered to provide transit facilities in the National Capital Region and for other purposes and to enact said amendment for the District of Columbia.

WHEREAS Congress heretofore has declared in the National Capital Transportation Act of 1960 (Public Law 86-669, 74 Stat. 537) and in the National Capital Transportation Act of 1965 (Public Law 89-173, 79 Stat. 663) that a coordinated system of rail rapid transit, bus transportation service, and highways is essential in the National Capital Region for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the Region, the effective performance of the functions of the United States Government located within the Region, the orderly growth and development of the Region, the comfort and convenience of the residents and visitors to the Region, and the preservation of the beauty and dignity of the Nation's Capital and that such a system should be developed cooperatively by the Federal, State, and local governments of the National Capital Region, with the costs of the necessary facilities financed, as far as possible, by persons using or benefiting from such facilities and the remaining costs shared equitably among the Federal, State, and local governments;

WHEREAS in furtherance of this policy, Congress, in title III of the National Capital Transportation Act

of 1960, authorized the District of Columbia, the Commonwealth of Virginia, and the State of Maryland to negotiate a Compact for the establishment of an organization, empowered, inter alia, to provide regional transportation facilities;

WHEREAS, it is the sense of the Congress that the Mass Transit Plan authorized by the Compact and this Act shall conform to the fullest extent practicable with the Comprehensive Plan for the National Capital and the general plan for the development of the National Capital Region prepared pursuant to the National Capital Planning Act of 1952 (Public Law 82-592, 66 Stat. 781); and

WHEREAS, the District of Columbia, the Commonwealth of Virginia and the State of Maryland, with a representative of the United States appointed by the President, have negotiated such a Compact, known as the Washington Metropolitan Area Transit Authority Compact, which amends the Washington Metropolitan Area Transit Regulation Compact, heretofore consented to by the Congress (Public Law 86-794, 74 Stat. 1031, as amended by Public Law 87-767, 76 Stat. 764), by adding thereto a title III and said Compact has been enacted by Maryland (Ch. 869, Acts of General Assembly 1965) and in substantially the same language by Virginia (Ch. 2, 1966 Acts of Assembly): Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (Public Law 86-794, 74 Stat. 1031, as amended by Public Law 87-767, 76 Stat. 764) by adding thereto title III, known as the Washington Metropolitan Area Transit Authority Compact, herein referred to as title III), substantially as follows:

"TITLE III

"ARTICLE I

"DEFINITIONS

"1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

"(a) 'Board' means the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(b) 'Director' means a member of the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(c) 'Private transit companies' and 'private carriers' means corporations, person, firms or associations rendering transit service within the Zone pursuant to a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission or by a franchise granted by the United States or any signatory party to this Title;

"(d) 'Signatory' means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

"(e) 'State' includes District of Columbia;

"(f) 'Transit facilities' means all real and personal property located in the Zone, necessary or useful in rendering transit service between points within the Zone, by means of rail, bus, water or air and any other mode of travel, including without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service;

"(g) 'Transit services' means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone and includes the transportation of newspapers, express and

mail between such points but does not include taxicab, sightseeing or charter service; and

"(h) 'WMATC' means Washington Metropolitan Area Transit Commission.

"ARTICLE II

"PURPOSE AND FUNCTIONS

"PURPOSE

"2. The purpose of this Title is to create a regional instrumentality, as a common agency of each signatory party, empowered, in the manner hereinafter set forth, (1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

"ARTICLE III

"ORGANIZATION AND AREA

"WASHINGTON METROPOLITAN AREA TRANSIT ZONE

"3. There is hereby created the Washington Metropolitan Area Transit Zone which shall embrace the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington and Fairfax and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

"WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

"4. There is hereby created, as an instrumentality and agency of each of the signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law.

"BOARD MEMBERSHIP

"5. (a) The Authority shall be governed by a Board of six Directors consisting of two Directors for each signatory. For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia, by the Commissioners of the District of Columbia; and for Maryland, by the Washington Suburban Transit Commission. In each instance the Director shall be appointed from among the members of the appointing body and shall serve for a term coincident with his term on the body by which he was appointed. A Director may be removed or suspended from office only as provided by the law of the signatory from which he was appointed. The appointing authorities shall also appoint an alternate for each Director, who may act only in the absence of the Director for whom he has been appointed an alternate, and each alternate shall serve at the pleasure of the appointing authority. In the event of a vacancy in the Office of Director or alternate, it shall be filled in the same manner as an original appointment.

"(b) Before entering upon the duties of his office each Director and alternate director shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation, if any, as the Constitution or laws of the signatory he represents shall provide:

"'I, ... , hereby solemnly swear (or affirm) that I will support and defend the Constiution of the United States and the Constitution and Laws of the state or political jurisdiction from which I was appointed

as a director (alternate director) of the Board of Washington Metropolitan Area Transit Authority and will faithfully discharge the duties of the office upon which I am about to enter.'

"COMPENSATION OF DIRECTORS AND ALTERNATES

"6. Members of the Board and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred as an incident to the performance of their duties.

"ORGANIZATION AND PRFCEDURE

"7. The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members. Meetings of the Board shall be held as frequently as the Board deems that the proper performance of its duties requires and the Board shall keep minutes of its meetings. The Board shall adopt rules and regulations governing its meeting, minutes and transactions.

QUORUM AND ACTIONS BY THE BOARD

"8. (a) Four Directors or alternates consisting of at least one Director or alternate appointed from each Signatory, shall constitute a quorum and no action by the Board shall be effective unless a majority of the Board, which majority shall include at least one Director or alternate from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the Directors representing any two Signatories.

"(b) The actions of the Board shall be expressed by motion or resolution. Actions dealing solely with internal management of the Authority shall become effective when directed by the Board, but no other action shall become effective prior to the expiration of thirty days following its adoption; provided, however, that the Board may provide for the acceleration of any action upon a finding

that such acceleration is required for the proper and timely performance of its functions.

"OFFICERS

"9. (a) The officers of the Authority, none of whom shall be members of the Board, shall consist of a general manager, a secretary, a treasurer, a comptroller and a general counsel and such other officers as the Board may provide. Except for the office of general manager and comptroller, the Board may consolidate any of such other offices in one person. All such officers shall be appointed and may be removed by the Board, shall serve at the pleasure of the Board and shall perform such duties and functions as the Board shall specify. The Board shall fix and determine the compensation to be paid to all officers and, except for the general manager who shall be a full-time employee, all other officers may be hired on a full-time or part-time basis and may be compensated on a salary or fee basis, as the Board may determine. All employees and such officers as the Board may designate shall be appointed and removed by the general manager under such rules of procedure and standards as the Board may determine.

"(b) The general manager shall be the chief administrative officer of the Authority and, subject to policy direction by the Board, shall be responsible for all activities of the Authority.

"(c) The treasurer shall be the custodian of the funds of the Authority, shall keep an account of all receipts and disbursements and shall make payments only upon warrants duly and regularly signed by the Chairman or Vice-Chairman of the Board, or other person authorized by the Board to do so, and by the secretary or general manager; provided, however, that the Board may provide that warrants not exceeding such amounts or for such purposes as may from time to time be specified by the Board may be signed by the general manager or by persons designated by him.

"(d) An oath of office in the form set out in Section 5(b) of this Article shall be taken, subscribed and filed with the Board by all appointed officers.

"(e) Each Director, officer and employees specified by the Board shall give such bond in such form and amount as the Board may require, the premium for which shall be paid by the Authority.

"CONFLICT OF INTERESTS

"10. (a) No Director, officer or employee shall:

"(1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;

"(2) in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

"(3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Authority.

"(b) Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employment.

"(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

"(d) Nothing in this section shall be construed to abrogate or limit the applicability of any federal or state law which may be violated by any action prescribed by this section.

"ARTICLE IV

"PLEDGE OF COOPERATION

"11. Each Signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this Title.

"ARTICLE V

"GENERAL POWERS

"ENUMERATION

"12. In addition to the powers and duties elsewhere described in this Title, and except as limited in this Title, the Authority may:

"(a) Sue and be sued;

"(b) Adopt and use a corporate seal and alter the same at pleasure;

"(c) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this Title;

"(d) Construct, acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, condemnation, lease, license, mortgage or otherwise but all of said property shall be located in the Zone and shall be necessary or useful in rendering transit service or in activities incidental thereto;

"(e) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any signatory party, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or any part thereof;

"(f) Enter into and perform contracts, leases and agreements with any person, firm or corporation or with any political subdivision or agency of any signatory party or with the federal government, or any agency thereof, including, but not limited to, contracts or agreements to furnish transit facilities and service;

"(g) Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of the Authority, and fix and provide for the qualification, appointment,

removal, term, tenure, compensation, pension and retirement rights of its officers and employees without regard to the laws of any of the signatories;

"(h) Establish, in its discretion, a personal system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable;

"(i) Contract for or employ any professional services;

"(j) Control and regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor;

"(k) Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned and, in connection therewith, subpoena witnesses, papers, records and documents; or delegate such authority to any officer. Each director may administer oaths or affirmations in any proceeding or investigation;

"(*l*) Make or participate in studies of all phases and forms of transportation, including transportation vehicle research and development techniques and methods for determining traffic projections, demand motivations, and fiscal research and publicize and make available the results of such studies and other information relating to transportation; and

"(m) Exercise, subject to the limitations and restrictions herein imposed, all powers reasonably necessary or essential to the declared objects and purposes of this Title.

"ARTICLE VI

"PLANNING

"MASS TRANSIT PLAN

"13. (a) The Board shall develop and adopt, and may from time to time review and revise, a mass transit plan for the immediate and long-range needs of the Zone. The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by

the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof; (2) the design and location of such facilities; (3) whether such facilities are to be constructed or acquired by lease, purchase or condemnation; (4) a timetable for the provision of such facilities; (5) anticipated capital costs; (6) estimated operating expenses and revenues relating thereto; and (7) the various other factors and considerations, which, in the opinion of the Board, justify and require the projects therein proposed. Such plan shall specify the type of equipment to be utilized, the areas to be served, the routes and schedules of service expected to be provided and the probable fares and charges therefor.

"(b) In preparing the mass transit plan, and in any review of revision thereof, the Board shall make full utilization of all data, studies, reports and information available from the National Capital Transportation Agency and from any other agencies of the federal government, and from signatories and the political subdivisions thereof.

"PLANNING PROCESS

"14. (a) The mass transit plan, and any revisions, alterations or amendments thereof, shall be coordinated, through the procedures hereinafter set forth, with

"(1) other plans and programs affecting transportation in the Zone in order to achieve a balanced system of transportation, utilizing each mode to its best advantage;

"(2) the general plan or plans for the development of the Zone; and

"(3) the development plans of the various political subdivisions embraced within the Zone.

"(b) It shall be the duty and responsibility of each member of the Board to serve as liaison between the Board and the body which appointed him to the Board. To provide a framework for regional participation in the planning process, the Board shall create technical com-

mittees concerned with planning and collection and analyses of data relative to decision-making in the transportation planning process and the Commissioners of the District of Columbia, the component governments of the Northern Virginia Transportation District and the Washington Suburban Transit District shall appoint representatives to such technical committees and otherwise cooperate with the Board in the formulation of a mass transit plan, or in revisions, alterations or amendments thereof.

"(c) The Board, in the preparation, revision, alteration or amendment of a mass transit plan, shall

"(1) consider data with respect to current and prospective conditions in the Zone, including, without limitation, land use, population, economic factors affecting development plans, goals or objectives for the development of the Zone and the separate political subdivisions, transit demands to be generated by such development, travel patterns, existing and proposed transportation and transit facilities, impact of transit plans on the dislocation of families and businesses, preservation of the beauty and dignity of the Nation's Capital, factors affecting environmental amenities and aesthetics and financial resources;

"(2) cooperate with and participate in any continuous, comprehensive transportation planning process cooperatively established by the highway agencies of the signatories and the local political subdivisions in the Zone to meet the planning standards now or hereafter prescribed by the Federal-Aid Highway Acts; and

"(3) to the extent not inconsistent with or duplicative of the planning process specified in subparagraph (2) of this paragraph (c), cooperate with the National Capital Planning Commission, the National Capital Regional Planning Council, the Washington Metropolitan Council of Governments, the Washington Metropolitan Area Transit Commission, the highway agencies of the Signatories, the Maryland-National Capital Park and Planning Commission, the Northern Virginia Regional Planning, and Economic Development Commission, the Maryland State Planning Department and the Commission of Fine Arts. Such cooperation shall include the creation, as necessary, of technical committees composed of personnel, appointed by such agencies, concerned with planning and collection and analysis of data relative to decision making in the transportation planning process.

"ADOPTION OF MASS TRANSIT PLAN

"15. (a) Before a mass transit plan is adopted, altered, revised or amended, the Board shall transmit such proposed plan, alteration, revision or amendment for comment to the following and to such other agencies as the Board shall determine:

"(1) the Commissioners of the District of Columbia, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission;

"(2) the governing bodies of the Counties and Cities embraced within the Zone;

"(3) the highway agencies of the Signatories;

"(4) the Washington Metropolitan Area Transit Commission;

"(5) the Washington Metropolitan Council of Governments;

"(6) the National Capital Planning Commission;

"(7) the National Capital Regional Planning Council;

"(8) the Maryland-National Capital Park and Planning Commission;

"(9) the Northern Virginia Regional Planning and Economic Development Commission;

"(10) the Maryland State Planning Department; and

"(11) the private transit companies operating in the Zone and the Labor Unions representing the em-

ployees of s ch companies and employees of contractors prov ding service under operating contracts.

"Information with respect thereto shall be released to the public. A copy of the proposed mass transit plan, amendment or revision, shall be kept at the office of the Board and shall be available for public inspection. After thirty days' notice published a [sic] once a week for two successive weeks in one or more newspapers of general circulation within the Zone, a public hearing shall be held with respect to the proposed plan, alteration, revision or amendment. The thirty days' notice shall begin to run on the first day the notice appears in any such newspaper. The Board shall consider the evidence submitted and statements and comments made at such hearing and may make any changes in the proposed plan, amendment or revision which it deems appropriate and such changes may be made without further hearing.

"ARTICLE VII

"FINANCING

"POLICY

"16. With due regard for the policy of Congress for financing a mass transit plan for the Zone set forth in Section 204(g) of the National Capital Transportation Act of 1960 (74 Stat. 537), it is hereby declared to be the policy of this Title that, as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone. The allocation among such governments of such remaining costs shall be determined by agreement among them and shall be provided in the manner hereinafter specified.

"PLAN OF FINANCING

"17. (a) The Authority, in conformance with said policy, shall prepare and adopt a plan for financing the construction, acquisition, and operation of facilities specified in a mass transit plan adopted pursuant to Article VI hereof, or in any alteration, revision or amendment thereof. Such plan of financing shall specify the facilities to be constructed or acquired, the cost thereof, the principal amount of revenue bonds, equipment trust certificates, and other evidences of debt proposed to be issued, the principal terms and provisions of all loans and underlying agreements and indentures, estimated operating expenses and revenues, and the proposed allocation among the federal, District of Columbia, and participating local governments of the remaining costs and deficits, if any, and such other information as the Commission may consider appropriate.

"(b) Such plan of financing shall constitute a proposal to the interested governments for financial participation and shall not impose any obligation on any government and such obligations shall be created only as provided in Section 18 of this Article VII.

"COMMITMENTS FOR FINANCIAL PARTICIPATION

"18. (a) Commitments on behalf of the portion of the Zone located in Virginia shall be by contract or agreement by the Authority with the Northern Virginia Transportation District, or its component governments, as authorized in the Transportation District Act of 1964 (Ch. 631, 1964 Acts of Virginia Assembly), to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or any alteration, revision or amendment thereof, and for meeting expenses and obligations in the operation of such facilities. No such contract or agreement, however, shall be entered into by the Authority with the Northern Virginia Transportation District unless said District has entered into

the contracts or agreements with its member governments, as contemplated by Section 1(b)(4) of Article 4 of said Act, which contracts or agreements expressly provide that such contracts or agreements shall inure to the benefit of the Authority and shall be enforceable by the Authority in accordance with the provisions of Section 2, Article 5 of the Act, and such contracts or agreements are acceptable to the Board. The General Assembly of Virginia hereby authorizes and designates the Authority as the agency to plan for and provide transit facilities and services for the area of Virginia encompassed within the Zone within the contemplation of Article 1, Section 3(c) of said Act.

"(b) Commitments on behalf of the portion of the Zone located in Maryland shall be by contract or agreement by the Authority with the Washington Suburban Transit District, pursuant to which the Authority undertakes to provide transit facilities and service in consideration for the agreement by said District to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"(c) With respect to the District of Columbia and the federal government, the commitment or obligation to render financial assistance shall be created by appropriation or in such other manner, or by such other legislation, as the Congress shall determine. If prior to making such commitment by or on behalf of the District of Columbia, legislation is enacted by the Congress granting the governing body of the District of Columbia plenary power to create obligations and levy taxes, the commitment by the District of Columbia shall be by contract or agreement between the governing body of the District of Columbia and the Authority, pursuant to which the Authority undertakes, subject to the provisions of Section 20 hereof, to provide transit facilities and service in consideration for the undertaking by the District of Columbia to contribute to the capital required for the construc-

tion and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"ADMINISTRATIVE EXPENSES

"19. Prior to the time the Authority has receipts from appropriations and contracts or agreements as provided in Section 18 of this Article VII, the expenses of the Authority for administration and for preparation of a mass transit and financing plan, including all engineering, financial, legal and other services required in connection therewith, shall, to the extent funds for such expenses are not provided through grants by the federal government, be borne by the District of Columbia, by the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District. Such expenses shall be allocated among such governments on the basis of population as reflected by the latest available population statistics of the Bureau of the Census; provided, however, that upon the request of any Director the Board shall make the allocation upon estimates of population acceptable to the Board. The allocations shall be made by the Board and shall be included in the annual current expense budget prepared by the Board.

"ACQUISITION OF FACILITIES FROM FEDERAL OR OTHER AGENCIES

"20. (a) The Authority is authorized to acquire by purchase, lease or grant or in any manner other than condemnation, from the federal government, or any agency thereof, from the District of Columbia, Maryland or Virginia, or any political subdivision or agency thereof, any transit and related facilities, including real and personal property and all other assets, located within the Zone, whether in operation or under construction. Such acquisition shall be made upon such terms and conditions

as may be agreed upon and subject to such authorization or approval by the Congress and the governing body of the District of Columbia, as may be required; provided, however, that if such acquisition imposes or may impose any further or additional obligation or liability upon the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, under any contract with the Authority, the Authority shall not make such acquisition until any such affected contract has been appropriately amended.

"(b) For such purpose, the Authority is authorized to assume all liabilities and contracts relating thereto, to assume responsibility as primary obligor, endorser or guarantor on any outstanding revenue bonds, equipment trust certificates or other form of indebtedness authorized in this Act issued by such predecessor agency or agencies and, in connection therewith, to become a party to, and assume the obligations of, any indenture or loan agreement underlying or issued in connection with any outstanding securities or debts.

"TEMPORARY BORROWING

"21. The Board may borrow, in anticipation of receipts, from any signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, or from any lending institution for any purposes of this Title, including administrative expenses. Such loans shall be for a term not to exceed two years and at a rate of interest not to exceed six percent per annum. The signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money.

"FUNDING

"22. The Board shall not construct or acquire any of the transit facilities specified in a mass transit plan adopted pursuant to the provisions of Article VI of this Title, or in any alteration, revision or amendment thereof, nor make any commitments or incur any obligations with respect thereto until funds are available therefor.

"ARTICLE VIII

"BUDGET

"CAPITAL BUDGET

"23. The Board shall annually adopt a capital budget, including all capital projects it proposes to undertake or continue during the budget period, containing a statement of the estimated cost of each project and the method of financing thereof.

"CURRENT EXPENSE BUDGET

"24. The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration, operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.

"ADOPTION AND DISTRIBUTION OF BUDGETS

"25. (a) Following the adoption by the Board of annual capital and current expense budgets, the general manager shall transmit certified copies of such budgets to the principal budget officer of the federal government, the District of Columbia, the Washington Suburban Transit District and of the component governments of the Northern Virginia Transportation Commission at such time and in such manner as may be required under their respective budgetary procedures.

"(b) Each budget shall indicate the amounts, if any, required from the federal government, the Government

of the District of Columbia, the Washington Suburban Transit District, and the component governments of the Northern Virginia Transportation District, determined in accordance with the commitments made pursuant to Article VII, Section 18 of this Title, to balance each of said budgets.

"PAYMENTS

"26. Subject to such review and approval as may be required by their budgetary or other applicable processes, the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District shall include in their respective budgets next to be adopted and appropriate or otherwise provide the amounts certified to each of them as set forth in the budgets.

"ARTICLE IX

"Revenue Bonds

"BORROWING POWER

"27. The Authority may borrow money for any of the purposes of this Title, may issue its negotiable bonds and other evidences of indebtedness in respect thereto and may mortgage or pledge its properties, revenues and contracts as security therefor.

"All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Authority. The bonds and other obligations of the Authority, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof.

"FUNDS AND EXPENSES

"28. The purposes of this Title shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction and for a period not to exceed two years thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Board or by others for such purposes and for working capital.

"CREDIT EXCLUDED; OFFICERS, STATE, POLITICAL SUBDIVISIONS AND AGENCIES

"29. The Board shall have no power to pledge the credit of any signatory party, political subdivision or agency thereof, or to impose any obligation for payment of the bonds upon any signatory party, political subdivision or agency thereof, but may pledge the contracts of such governments and agencies; provided, however, that the bonds may be underwritten in whole or in part as to principal and interest by the United States, or by any political subdivision or agency of any signatory; provided, further, that any bonds underwritten in whole or in part as to principal and interest by the United States shall not be issued without approval of the Secretary of the Treasury. Neither the Directors nor any person executing the bonds shall be liable personally on the bonds of the Authority or be subject to any personal liability or accountability by reason of the issuance thereof.

"FUNDING AND REFUNDING

"30. Whenever the Board deems it expedient, it may fund and refund the bonds and other obligations of the

Authority whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or cash adjustment required in connection therewith) issued by the Authority or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Authority or which are payable out of the revenues of any facility acquired by the Authority. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Authority. All provisions of this Title applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

"BONDS; AUTHORIZATION GENERALLY

"31. Bonds and other indebtedness of the Authority shall be authorized by resolution of the Board. The validity of the authorization and issuance of any bonds by the Authority shall not be dependent upon nor affected in any way by: (i) the disposition of bond proceeds by the Board or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Authority may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Board may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Authority in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Board. The Board may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Board may determine.

"BONDS; RESOLUTIONS AND INDENTURES GENERALLY

"32. The Board may determine and enter into indentures or adopt resolutions providing for the principal amount, date or dates, maturities, interest rate, or rates, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Board authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this Title, other than any restriction on the regulatory powers vested in the Board by this Title, as the Board may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys or contracts of the Authority; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Authority or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this Title into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the

provisions of the indenture and of this Title and is bound thereby.

"MAXIMUM MATURITY

"33. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

"TAX EXEMPTION

"34. All bonds and all other evidences of debt issued by the Authority under the provisions of this Title and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any signatory parties, except for transfer, inheritance and estate taxes.

"INTEREST

"35. Bonds shall bear interest at a rate of not to exceed six percent per annum, payable annually or semiannually.

"PLACE OF PAYMENT

"36. The Board may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

"EXECUTION

"37. The Board may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of members of the Board, and by additional authentication by a trustee or fiscal agent appointed by the Board; provided, however, that one of such signatures shall be manual. If any of the

members whose signatures or countersignatures appear upon the bonds or coupons cease to be members before the delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the members had remained in office until the delivery of the bonds and coupons.

"HOLDING OWN BONDS

"38. The Board shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

"SALE

"39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold of more than six percent per annum payable semiannually, according to standard tables of bond values. All bonds issued and sold pursuant to this Title may be sold in such manner, either at public or private sale, as the Board shall determine.

"NEGOTIABILITY

"40. All bonds issued under the provisions of this Title are negotiable instruments.

"BONDS ELIGIBLE FOR INVESTMENT AND DEPOSIT

"41. Bonds issued under the provisions of this Title are hereby made securities in which all public officers and public agencies of the signatories and their political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and in-

surance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer of any signatory, or of any agency or political subdivision of any signatory, for any purpose for which the deposit of bonds or other obligations of such signatory is now or may hereafter be authorized by law.

"VALIDATION PROCEEDINGS

"42. Prior to the issuance of any bonds, the Board may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

"RECORDING

"43. No indenture need be recorded or filed in any public office, other than the office of the Board. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Board of the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Board or to the indenture trustee.

"PLEDGED REVENUES

"44. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all revenues received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such revenues, together with interest

thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

"REMEDIES

"45. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Board or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the Authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

"ARTICLE X

"EQUIPMENT TRUST CERTIFICATES

"POWER

"46. The Board shall have power to execute agreements, leases and equipment trust certificates with re-

spect to the purchase of facilities or equipment such as cars, trolley buses and motor buses, or other craft, in the form customarily used in such cases and appropriate to effect such purchase, and may dispose of such equipment trust certificates in such manner as it may determine to be for the best interests of the Authority. Each vehicle covered by an equipment trust certificate shall have the name of the owner or lessor plainly marked upon both sides thereof, followed by the words 'Owner and Lessor'.

"PAYMENTS

"47. All monies required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue to be derived from the operation of the transit system or from such grants, loans, appropriations or other revenues, as may be available to the Board under the provisions of this Title. Payment for such facilities or equipment, or rentals thereof, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates as aforesaid, and title to such facilities or equipment may not vest in the Authority until the equipment trust certificates are paid.

"PROCEDURE

"48. The agreement to purchase facilities or equipment by the Board may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in any of the signatory States, or to the Housing and Home Finance Administrator, as trustee, lessor or vendor, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the faciliies and equipment to one or more designated officers of the Board and may authorize the trustee simultaneously therewith to execute and deliver a lease of the facilities or equipment to the Board.

"AGREEMENTS AND LEASES

"49. The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgements of deeds and in the form required for acknowledgement of deeds and such agreements, leases, and equipment trust certificates shall be authorized by resolution of the Board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenues to be derived from the operation of the transit system and other funds.

"The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any resolution or trust agreement securing the payment of bonds or other obligations of the Authority then outstanding or confiict with or be in derogation of the rights of the holders of any such bonds or other obligations.

"LAW GOVERNING

"50. The equipment trust certificates issued hereunder shall be governed by Laws of the District of Columbia and for this purpose the chief place of business of the Authority shall be considered to be the District of Columbia. The filing of any documents required or permitted to be filed shall be governed by the Laws of the District of Columbia.

"ARTICLE XI

"OPERATION OF FACILITIES

"OPERATION BY CONTRACT OR LEASE

"51. The Authority shall not perform transit service, nor any of the functions, such as maintenance of equipment and right of way normally associated with the providing of such service, with any transit facilities owned or controlled by it but shall provide for the per-

formance of transit service with such facilities by contract or contracts with private transit companies, private railroads, or other persons. Any facilities and properties owned or controlled by the Authority, other than those utilized in performing transit service, may be operated by the Authority or by others pursuant to contract or lease as the Board may determine. All operations of such facilities and properties by the Authority and by its Contractor and lessees shall be within the Zone.

"THE OPERATING CONTRACT

"52. Without limitation upon the right of the Board to prescribe such additional terms and provisions as it may deem necessary and appropriate, the operating contract shall;

"(a) specify the services and functions to be performed by the Contractor;

"(b) provide that the Contractor shall hire, supervise and control all personnel required to perform the services and functions assumed by it under the operating contract and that all such personnel shall be employees of the Contract or and not of the Authority;

"(c) require the Contractor to assume the obligations of the labor contract or contracts of any transit company which may be acquired by the Authority and assume the pension obligations of any such transit company;

"(d) require the Contractor to comply in all respects with the labor policy set forth in Article XIV of this Title;

"(e) provide that no transfer of ownership of the capital stock, securities or interests in any Contractor, whose principal business is the operating contract, shall be made without written approval of the Board and the certificates or other instruments representing such stock, securities or interests shall contain a statement of this restriction;

"(f) provide that the Board shall have the sole authority to determine the rates or fares to be charged, the routes to be operated and the service to be furnished;

"(g) specify the obligations and liabilities which are to be assumed by the Contractor and those which are to be the responsibility of the Authority;

"(h) provide for an annual audit of the books and accounts of the Contractor by an independent certified public accountant to be selected by the Board and for such other audits, examinations and investigations of the books and records, procedures and affairs of the Contractor at such times and in such manner as the Board shall require, the cost of such audits, examinations and investigations to be borne as agreed by the parties in the operating contract; and

"(i) provide that no operating contract shall be entered into for a term in excess of five years; provided, that any such contract may be renewed for successive terms, each of which shall not exceed five years. Any such operating contract shall be subject to termination by the Board for cause only.

"COMPENSATION FOR CONTRACTOR

"53. Compensation to the Contractor under the operating contract may, in the discretion of the Board, be in the form of (1) a fee paid by the Board to the Contractor for services, (2) a payment by the Contractor to the Board for the right to operate the system, or (3) such other arrangement as the Board may prescribe; provided, however, that the compensation shall bear a reasonable relationship to the benefits to the Authority and to the estimated costs the Authority would incur in directly performing the functions and duties delegated under the operating contract; and provided, further, that no such contract shall create any right in the Contractor (1) to make or change any rate or fare or alter or change the service specified in the contract to be provided or (2) to seek judicial relief by any form of original action, review or other proceedings from any rate or fare or service prescribed by the Board. Any assertion, or attempted assertion, by the Contractor of the right to make or change any rate or fare or service prescribed by

the Board shall constitute cause for termination of the operating contract. The operating contract may provide incentives for efficient and economical management.

"SELECTION OF CONTRACTOR

"54. The Board shall enter into an operating contract only after formal advertisement and negotiations with all interested and qualified parties, including private transit companies rendering transit service within the Zone; provided, however, that, if the Authority acquires transit facilities from any agency of the federal or District of Columbia governments, in accordance with the provisions of Article VII, Section 20 of this Title, the Authority shall assume the obligations of any operating contract which the transferor agency may have entered into.

"ARTICLE XII

"COORDINATION OF PRIVATE AND PUBLIC FACILITIES

"DECLARATION OF POLICY

"55. It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

"IMPLEMENTATION OF POLICY

"56. In order to carry out the legislative policy set forth in Section 55 of this Article XII

"(a) The Authority—

"(1) except as herein provided, shall not, directly or through a Contractor, perform transit service by bus or similar motor vehicles;

"(2) shall, in cooperation with the private carriers and WMATC, coordinate to the fullest extent practicable, the schedules for service performed by its facilities with the schedules for service performed by private carriers; and

"(3) shall enter into agreements with the private carriers to establish and maintain, subject to approval by WMATC, through routes and joint fares and provide for the division thereof, or, in the absence of such agreements, establish and maintain through routes and joint fares in accordance with orders issued by WMATC directed to the private carriers when the terms and conditions for such through service and joint fares are acceptable to it.

"(b) The WMATC, upon application, complaint, or upon its own motion, shall—

"(1) direct private carriers to coordinate their schedules for service with the schedules for service performed by facilities owned or controlled by the Authority;

"(2) direct private carriers to improve or extend any existing services or provide additional service over additional routes;

"(3) authorize a private carrier, pursuant to agreement between said carrier and the Authority, to establish and maintain through routes and joint fares for transportation to be rendered with facilities owned or controlled by the Authority if, after hearing held upon reasonable notice, WMATC finds that such through routes and joint fares are required by the public interest; and

"(4) in the absence of such an agreement with the Authority, direct a private carrier to establish and maintain through routes and joint fares with the Authority, if, after hearing held upon reasonable notice, WMATC finds that such through service and joint fares are required by the public interest; provided, however, that no such order, rule or regulation of WMATC shall be construed to require the

Authority to establish and maintain any through route and joint fare.

"(c) WMATC shall not authorize or require a private carrier to render any service, including the establishment or continuation of a joint fare for a through route service with the Authority which is based on a division thereof between the Authority and private carrier which does not provide a reasonable return to the private carrier, unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to the jurisdiction of WMATC. In determining the issue of reasonable return, WMATC shall take into account any income attributable to the carrier, or to any corporation, firm or association owned in whole or in part by the carrier, from the Authority whether by way of payment for services or otherwise.

"(d) If the WMATC is unable, through the exercise of its regulatory powers over the private carriers granted in paragraph (b) hereof or otherwise, to bring about the requisite coordination of operations and service between the private carriers and the Authority, the Authority may in the situations specified in paragraph (b) hereof, cause such transit service to be rendered by its Contractor by bus or other motor vehicle, as it shall deem necessary to effectuate the policy set forth in Section 55 hereof. In any such situation, the Authority, in order to encourage private carriers to render bus service to the fullest extent practicable, may, pursuant to agreement, make reasonable subsidy payments to any private carrier.

"RIGHTS OF PRIVATE CARRIERS UNAFFECTED

"57. Nothing in this Title shall restrict or limit such rights and remedies, if any, that any private carrier may have against the Authority arising out of acts done or actions taken by the Authority hereunder. In the event any court of competent jurisdiction shall determine that the Authority has unlawfully infringed any rights of any private carrier or otherwise caused or permitted any private carrier to suffer legally cognizable in-

jury, damages or harm and shall award a judgment therefor, such judgment shall constitute a lien against any and all of the assets and properties of the Authority.

"FINANCIAL ASSISTANCE TO PRIVATE CARRIERS

"58. (a) The Board may accept grants from and enter into loan agreements with the Housing and Home Finance Administrator, pursuant to the provisions of the Urban Mass Transportation Act of 1964 (78 Stat. 302), or with any successor agency or under any law of similar purport, for the purpose of rendering financial assistance to private carriers.

"(b) An application by the Board for any such grant or loan shall be based on and supported by a report from WMATC setting forth for each private carrier to be assisted (1) the equipment and facilities to be acquired, constructed, reconstructed, or improved, (2) the service proposed to be rendered by such equipment and facilities, (3) the improvement in service expected from such facilities and equipment, (4) how the use of such facilities and equipment will be coordinated with the transit facilities owned by the Authority, (5) the ability of the affected private carrier to repay any such loans or grants and (6) recommend [sic] terms for any such loans or grants.

"(c) Any equipment or facilities acquired, constructed, reconstructed or improved with the proceeds of such grants or loans shall be owned by the Authority and may be made available to private carriers only by lease or other agreement which contain [sic] provisions acceptable to the Housing and Home Finance Administrator assuring that the Authority will have satisfactory continuing control over the use of such facilities and equipment.

"ARTICLE XIII

"JURISDICTION; RATES AND SERVICE

"WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

"59. Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

"PUBLIC FACILITIES

"60. Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled by the Authority. The determinations of the Board with respect to such matters shall not be subject to judicial review nor to the processes of any court.

"STANDARDS

"61. Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Board so as to result in revenues which will:

"(a) pay the operating expenses and provide for repairs, maintenance and depreciation of the transit system owned or controlled by the Authority;

"(b) provide for payment of all principal and interest on outstanding revenue bonds and other obligations and for payment of all amounts to sinking funds and other funds as may be required by the terms of any indenture or loan agreement;

"(c) provide for the purchase, lease or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for payment of any obligations incurred by the Authority for the acquisition of rolling stock; and

"(d) provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of this Title.

"HEARINGS

"62. (a) The Board shall not make or change any fare or rate, nor establish or abandon any service except after holding a public hearing with respect thereto.

"(b) Any signatory, any political subdivision thereof, any agency of the federal government and any person, firm or association served by or using the transit facilities of the Authority and any private carrier may file a request with the Board for a hearing with respect to any rates or charges made by the Board or any service rendered with the facilities owned or controlled by the Authority. Such request shall be in writing, shall state the matter on which a hearing is requested and shall set forth clearly the matters and things on which the request relies. As promptly as possible after such a request is filed, the Board, or such officer or employee as it may designate, shall confer with the protestant with respect to the matters complained of. After such conference, the Board, if it deems the matter meritorious and of general significance, may call a hearing with respect to such request.

"(c) The Board shall give at least thirty days' notice for all hearings. The notice shall be given by publication in a newspaper of daily circulation throughout the Zone and such notice shall be published once a week for two successive weeks. The notice shall start with the day of first publication. In addition, the Board shall post notices of the hearing in its offices, all stations and terminals, and in all of its vehicles and rolling stock in revenue service.

"(d) Prior to calling a hearing on any matter specified in this section, the Board shall prepare and file at its main

office and keep open for public inspection its report relating to the proposed action to be considered at such hearing. Upon receipt by the Board of any report submitted by WMATC, in connection with a matter set for hearing, pursuant to the provisions of Section 63 of this Article XIII, the Board shall file such report at its main office and make it available for public inspection. For hearings called by the Board pursuant to paragraph (b), above, the Board also shall cause to be lodged and kept open for public inspection the written request upon which the hearing is granted and all documents filed in support thereof.

"REFERENCE OF MATTERS TO WMATC

"63. To facilitate the attainment of the public policy objectives for operation of the publicly and privately owned or controlled transit facilities as stated in Article XII, Section 55, prior to the hearings provided for by Section 62 hereof—

"(a) The Board shall refer to WMATC for its consideration and recommendations, any matter which the Board considers may affect the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional transit system and any matter for which the Board has called a hearing, pursuant to Section 62 of this Article XIII, except that temporary or emergency changes in matters affecting service shall not be referred; and

"(b) WMATC, upon such reference of any matter to it, shall give the referred matter preference over any other matters pending before it and shall, as expeditiously as practicable, prepare and transmit its report thereon to the Board. The Board may request WMATC to reconsider any part of its report or to make any supplemental reports it deems necessary. All of such reports shall be advisory only.

"(c) Any report submitted by WMATC to the Board shall consider, without limitation, the probable effect of the matter or proposal upon the operation of the publicly and privately owned or controlled transit facilities as a

coordinated regional system, passenger movements, fare structures, service and the impact on the revenues of both the public and private facilities.

"ARTICLE XIV

"LABOR POLICY

"CONSTRUCTION

"64. The Board shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are undertaken by the Authority or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project, which contract shall be deemed to be a contract of the character specified in Section 103 of the Contract Work Hours Standards Act (76 Stat. 357), as now or as may hereafter be in effect. The Secretary of Labor shall have, with respect to the administration and enforcement of the labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)). The requirements of this section shall also be applicable with

respect to the employment of laborers and mechanics in the construction, alteration or repair, including painting and decorating, of the transit facilities owned or controlled by the Authority where such activities are performed by a Contractor pursuant to agreement with the operator of such facilities.

"EQUIPMENT AND SUPPLIES

"65. Contracts for the manufacture or furnishing of materials, supplies, articles and equipment shall be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), as now or as may hereafter be in effect.

"OPERATIONS

"66. It shall be a condition of the operation of the transit facilities owned or controlled by the Authority that the provisions of section 10(c) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1609(c)) shall be applicable to any contract or other arrangement for the operation of such facilities.

"ARTICLE XV

"RELOCATION ASSISTANCE

"RELOCATION PROGRAM AND PAYMENTS

"67. Section 7 of the Urban Mass Transportation Act of 1964, and as the same may from time to time be amended, and all regulations promulgated thereunder, are hereby made applicable to individuals, families, business concerns and nonprofit organizations displaced from real property by actions of the Authority without regard to whether financial assistance is sought by or extended to the Authority under any provision of that Act; provided, however, that in the event real property is acquired for the Authority by an agency of the federal government, or by a State or local agency or instru-

mentality, the Authority is authorized to reimburse the acquiring agency for relocation payments made by it.

"RELOCATION OF PUBLIC OR PUBLIC UTILITY FACILITIES

"68. Notwithstanding the provisions of Section 67 of this article XV, any highway or other public facility or any facilities of a public utility company which will be dislocated by reason of a project deemed necessary by the Board to effectuate the authorized purposes of this Title shall be relocated if such facilities are devoted to a public use, and the reasonable cost of relocation, if substitute facilities are necessary, shall be paid by the Board from any of its monies.

"ARTICLE XVI

"GENERAL PROVISIONS

"CREATION AND ADMINISTRATION OF FUNDS

"69. (a) The Board may provide for the creation and administration of such funds as may be required. The funds shall be disbursed in accordance with rules established by the Board and all payments from any fund shall be reported to the Board. Monies in such funds and other monies of the Authority shall be deposited, as directed by the Board, in any state or national bank located in the Zone having a total paid-in capital of at least one million dollars ($1,000,000). The trust department of any such state or national bank may be designated as a depositary to receive any securities acquired or owned by the Authority. The restriction with respect to paid-in capital may be waived for any such bank which agrees to pledge federal securities to protect the funds and securities of the Authority in such amounts and pursuant to such arrangements as may be acceptable to the Board.

"(b) Any monies of the Authority may, in the discretion of the Board and subject to any agreement or covenant between the Authority and the holders of any of its

obligations limiting or restricting classes of investments, be invested in bonds or other obligations of, or guaranteed as to interest and principal by, the United States, Maryland, Virginia or the political subdivisions or agencies thereof.

"ANNUAL INDEPENDENT AUDIT

"70. (a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the Authority. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest direct or indirect in the financial affairs of the Authority or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be filed with the Chairman and other officers as the Board shall direct. Copies of the report shall be distributed to each Director, to the Congress, to the Board of Commissioners of the District of Columbia, to the Governors of Virginia and Maryland, to the Washington Suburban Transit Commission, to the Northern Virginia Transportation Commission and to the governing bodies of the political subdivisions located within the Zone which are parties to commitments for participation in the financing of the Authority and shall be made available for public distribution.

"(b) The financial transactions of the Board shall be subject to audit by the United States General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Board are kept.

"(c) Any Director, officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Board or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall, in the discretion of the Board forfeit his office.

"REPORTS

"71. The Board shall make and publish an annual report on its programs, operations and finances, which shall be distributed in the same manner provided by Section 70 of this Article XVI for the report of annual audit. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

"INSURANCE

"72. The Board may self-insure or purchase insurance and pay the premiums therefore against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Board may determine, subject to the requirements of any agreement arising out of issuance of bonds or other obligations by the Authority.

"PURCHASING

"73. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars ($10,000) and contracts for the purchase of supplies, equipment and materials when the expenditure required exceeds two thousand five hundred dollars ($2,500) shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least ten days before bids are received and in at least two newspapers of general circulation in the Zone. The Board may reject any and all bids and readvertise in its discretion. If after rejecting bids the Board determines and resolves that, in its opinion, the supplies, equipment and materials may be purchased at a lower price in the open market, the Board may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies,

equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The Board shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publication are not required by this section. The Board may suspend and waive the provisions of this section requiring competitive bids whenever:

"(a) the purchase is to be made from or the contract is to be made with the federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

"(b) the public exigency requires the immediate delivery of the articles;

"(c) only one source of supply is available; or

"(d) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

"RIGHTS OF WAY

"74. The Board is authorized to locate, construct and maintain any of its transit and related facilities in, upon, over, under or across any streets, highways, freeways, bridges and any other vehicular facilities, subject to the applicable laws governing such use of such facilities by public agencies. In the absence of such laws, such use of such facilities by the Board shall be subject to such reasonable conditions as the highway department or other affected agency of a signatory party may require; provided, however, that the Board shall not construct or operate transit or related facilities upon, over, or across any parkways or park lands without the consent of, and except upon the terms and conditions required by, the agency having jurisdiction with respect to such parkways and park lands, but may construct or operate such facilities in a subway under such parkways or park lands upon such reasonable terms and conditions

as may be specified by the agency having jurisdiction with respect thereto.

"COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES

"75. The Board shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

"POLICE

"76. The Board is authorized to employ watchmen, guards and investigators as it may deem necessary for the protection of its properties, personnel and passengers and such employees, when authorized by any jurisdiction within the Zone, may serve as special police officers in any such jurisdiction. Nothing contained herein shall relieve any signatory or political subdivision or agency thereof from its duty to provide police service and protection or to [sic] limit, restrict or interfere with the jurisdiction of or performance of duties by the existing police and law enforcement agencies.

"EXEMPTION FROM REGULATION

"77. Except as otherwise provided in this Title, any transit service rendered by transit facilities owned or controlled by the Authority and the Authority or any corporation, firm or association performing such transit service pursuant to an operating contract with the Authority, shall, in connection with the performance of such service, be exempt from all laws, rules, regulations and orders of the signatories and of the United States otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect; provided, however, that the Board may promulgate regulations for the safety of the public and employees not inconsistent with the

applicable laws, rules, regulations or orders of the signatories and of the United States.

"TAX EXEMPTION

"78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the signatory states and is for a public purpose and that the Authority and the Board will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon it activities in the operation and maintenance of any transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

"FREE TRANSPORTATION AND SCHOOL FARES

"79. All laws of the signatories with respect to free transportation and school fares shall be applicable to transit service rendered by facilities owned or controlled by the Authority.

"LIABILITY FOR CONTRACTS AND TORTS

"80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

"JURISDICTION OF COURTS

"81. The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued under this Title. Any such action initiated in a State Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

"CONDEMNATION

"82. (a) The Authority shall have the power to acquire by condemnation, whenever in its opinion it is necessary or advantageous to the Authority to do so, any real or personal property, or any interest therein, necessary or useful for the transit system authorized herein, except property owned by the United States, by a signatory, or any political subdivision thereof, or by a private transit company.

"(b) Proceedings for the condemnation of property in the District of Columbia shall be instituted and maintained under the Act of December 23, 1963 (77 Stat. 577-581, D.C.Code 1961, Supp. IV, Sections 1351-1368). Proceedings for the condemnation of property located elsewhere within the Zone shall be instituted and maintained, if applicable, pursuant to the provisions of the Act of August 1, 1888, as amended (25 Stat. 357, 40 U.S.C. 257) and the Act of June 25, 1948 (62 Stat. 935 and 937, 28 U.S.C. 1358 and 1403) or any other applicable Act; provided, however, that if there is no applicable Federal law, condemnation proceedings shall be in

accordance with the provisions of the State law of the signatory in which the property is located governing condemnation by the highway agency of such state. Whenever the words 'real property,' 'realty,' 'land,' 'easement,' 'right-of-way,' or words of similar meaning are used in any applicable federal or state law relating to procedure, jurisdiction and venue, they shall be deemed, for the purposes of this Title, to include any personal property authorized to be acquired hereunder.

"(c) Any award or compensation for the taking of property pursuant to this Title shall be paid by the Authority, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

"ENLARGEMENT AND WITHDRAWAL; DURATION

"83. (a) When advised in writing by the Northern Virginia Transportation Commission or the Washington Suburban Transit Commission that the geographical area embraced therein has been enlarged, the Board, upon such terms and conditions as it may deem appropriate, shall by resolution enlarge the Zone to embrace the additional area.

"(b) The duration of this Title shall be perpetual but any signatory thereto may withdraw therefrom upon two years' written notice to the Board.

"(c) The withdrawal of any signatory shall not relieve such signatory, any transportation district, county or city or other political subdivision thereof from any obligation to the Authority, or inuring to the benefit of the Authority, created by contract or otherwise.

"AMENDMENTS AND SUPPLEMENTS

"84. Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

"CONSTRUCTION AND SEVERABILITY

"85. The provisions of this Title and of the agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this Title or any such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, political subdivision or agency thereof is held invalid, the constitutionality of the remainder of this Title or any such agreement and the applicability thereof to any other signatory party, political subdivision or agency thereof or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

"EFFECTIVE DATE; EXECUTION

"86. This Title shall be adopted by the signatories in the manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with laws of the State in which the filing is made, and one copy shall be filed and retained in the archives of the Authority upon its organization. This Title shall become effective ninety days after the enactment of concurring legislation by or on behalf of the District of Columbia, Maryland and Virginia and consent thereto by the Congress and all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Commissioners of the District of Columbia."

Section 2. The Commissioners of the District of Columbia are authorized and directed to enter into and execute an amendment to the Compact substantially as set forth above with the States of Virginia and Maryland and are further authorized and directed to carry out and effectuate the terms and provisions of said Title III, and there are hereby authorized to be appropriated out of District of Columbia funds such amounts as are

necessary to carry out the obligations of the District of Columbia in accordance with the terms of the said Title III.

Section 3. (a) To assure interrupted progress in the development of the facilities authorized by the National Capital Transportation Act of 1965, the transfer of the functions and duties of the National Capital Transportation Agency (herein referred to as the Agency) to the Washington Metropolitan Area Transit Authority (herein referred to as the Authority) as required by Section 301 (b) of the National Capital Transportation Act of 1960 shall take place on September 30, 1967.

(b) Upon the effective date of the transfer of functions and duties authorized by subsection (a) of this section, the President is authorized to transfer to the Authority such real and personal property, studies, reports, records, and other assets and liabilities as are appropriate in order that the Authority may assume the functions and duties of the Agency and, further, the President shall make provision for the transfer to the Authority of the unexpended balance of the appropriations, and of other funds, of the Agency for use by the Authority but such unexpended balances so transferred shall be used only for the purpose for which such appropriations were originally made. Subsequent to said effective date, there is authorized to be appropriated to the Department of Housing and Urban Development, for payment to the Authority, any unappropriated portion of the authorization specified in Section 5(a)(1) of the National Capital Transportation Act of 1965. There is also authorized to be appropriated to the District of Columbia out of the general fund of the District of Columbia, for payment to the Authority, any unappropriated portion of the authorization specified in section 5 (a)(2) of such Act. Any such appropriations shall be used only for the purposes for which such authorizations were originally made.

(c) Pending the assumption by the Authority of the functions and duties of the Agency, the Agency is authorized and directed, in the manner herein set forth, fully to cooperate with and assist the Authority, the

Northern Virginia Transportation Commission and the Washington Suburban Transit Commission in the development of plans for the extensions, new lines and related facilities required to expand the basic system authorized by the National Capital Transportation Act of 1965 into a regional system, but, pending such transfer of functions and duties, nothing in this Act shall be construed to impair the performance by the Agency of the functions and duties imposed by the National Capital Transportation Act of 1965.

(d) In order to provide the cooperation and assistance specified in subsection (c) of this section, the Agency is authorized to perform, on a reimbursable basis, planning, engineering and such other services of the Authority, as the Authority may request, or to obtain such services by contract, but all such assistance and services shall be rendered in accordance with policy determinations made by the Authority and shall be advisory only.

(e) Amounts received by the Agency from the Authority as provided in subsection (d) of this section shall be available for expenditure by the Agency in performing services for the Authority.

Section 4. The United States District Court shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued pursuant to the provisions of Title III. Any such action initiated in a State court shall be removable to the appropriate United States District Court in the manner provided by the Act of June 25, 1948, as amended (28 U.S.C. 1446).

Section 5. (a) All laws or parts of laws of the United States and of the District of Columbia inconsistent with the provisions of Title III of this Act are hereby amended for the purpose of this Act to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this Act and Title III and all laws or parts of laws and all reorganization plans of the United States are hereby amended and made applicable for the purpose of this Act to the extent necessary to carry out the provisions of this Act and Title III.

(b) Section 202 of the National Capital Transportation Act of 1960 (Public Law 86-669, 74 Stat. 537), as amended by Section 7 of the National Capital Transportation Act of 1965 (Public Law 89-173, 79 Stat. 666) is hereby repealed.

Section 6. (a) The right to alter, amend or repeal this Act is hereby expressly reserved.

(b) The Authority shall submit to Congress and the President copies of all annual and special reports made to the Governors, the Commissioners of the District of Columbia and/or the legislatures of the compacting States.

(c) The President and the Governors or any committees thereof shall have the right to require the disclosure and furnishing of such information by the Authority as they may deem appropriate. Further, the President and Congress or any of its committees shall have access to all books, records and papers of the Authority as well as the right of inspection of any facility used, owned, leased, regulated or under the control of said Authority.

(d) In carrying out the audits provided for in section 70(b) of the Compact the representations of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Board and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, agents, and custodians.

Approved November 6, 1966.

* * * *

TITLE II—INCREASED DISTRICT OF COLUMBIA CONTRIBUTION

Sec. 201. (a) Section 4(a) of the National Capital Transportation Act of 1969 (D.C. Code, sec. 1-1443(a)) is amended (1) by striking out "$216,500,000" and inserting in lieu thereof "$269,700,000", and (2) by striking out "$166,500,000" and inserting in lieu thereof "$219,700,000".

(b) Paragraph (3) of subsection (b) of the first section of the Act of June 6, 1958 (D.C.Code, sec. 9-220(b)(3)) is amended (1) by striking out "$216,500,000" and inserting in lieu thereof "$269,700,000", and (2) by striking out "$166,500,000" and inserting in lieu thereof "$219,700,000".

TITLE III—COMPACT AMENDMENTS

Sec. 301. (a) The Congress hereby consents to amendments to articles I, III, VII, IX, XI, XIV, and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact (D.C.Code, sec. 1-1431 note) substantially as follows:

(1) Section 1(g) of article I is amended to read as follows:

"(g) 'Transit services' means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone including the transportation of newspapers, express, and mail between such points, and charter service which originates within the Zone but does not include taxicab service or individual-ticket-sales sightseeing operations; and".

(2) Section 5(a) of article III is amended to read as follows:

"5. (a) The Authority shall be governed by a Board of six Directors consisting of two Directors for each signatory. For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia by the City Council of the District of Columbia from among its members, the Commissioner and the Assistant to the Commissioner of the District of Columbia; and for Maryland, by the Washington Suburban Transit Commission. In each instance the Director shall be appointed from among the members of the appointing body, except as otherwise provided herein, and shall serve for a term coincident with his term on the body by which he was appointed. A director may be removed or suspended from office only as provided by the law of the signatory from which he was appointed. The appointing authorities shall also appoint an alternate for each Director, who may act only in the absence of the Director for whom he has been appointed an alternate, except that, in the case of the District of Columbia where only one Director and his alternate are present, such alternate may act on behalf of the absent Director. Each alternate shall serve at the pleasure of the appointing authority. In the event of a vacancy in the office of Director or alternate, it shall be filled in the same manner as an original appointment."

(3) Section 21 of article VII is amended to read as follows:

"Temporary Borrowing

"21. The Board may borrow, in anticipation of receipts, from any signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District or any component government thereof, or from any lending institution for any purposes of this title, including administrative expenses. Such loans shall be for a term not to exceed two years and at such rates of interest as shall be acceptable to the Board. The signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money."

(4) Section 35 of article IX is amended to read as follows:

"Interest

"35. Bonds shall bear interest at such rate or rates as may be determined by the Board, payable annually or semiannually."

(5) Section 39 of article IX is amended to read as follows:

"Sale

"39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold in excess of the applicable rate determined by the Board, payable semiannually, computed with relation to the absolute maturity of the bonds according to standard tables of bond values, deducting the amount of any premium to be paid on the redemption of any bonds prior to maturity. All bonds issued and sold pursuant to this title may be sold in such manner, either at public or private sale, as the Board shall determine."

(6) Section 51 of article XI is amended to read as follows:

"Operation by Contract or Lease

"51. Any facilities and properties owned or controlled by the Authority may be operated by the Authority directly or by others pursuant to contract or lease as the Board may determine."

(7) Section 66 of article XIV is amended to read as follows:

"Operations

"66. (a) The rights, benefits, and other employee protective conditions and remedies of section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of

Labor shall apply to the operation by the Washington Metropolitan Area Transit Authority of any mass transit facilities owned or controlled by it and to any contract or other arrangement for the operation of transit facilities. Whenever the Authority shall operate any transit facility or enter into any contractual or other arrangements for the operation of such transit facility the Authority shall extend to employees of affected mass transportation systems first opportunity for transfer and appointment as employees of the Authority in accordance with seniority, in any nonsupervisory job in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment nor any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

"(b) The Authority shall deal with and enter into written contracts with employees as defined in section 152 of title 29, United States Code, through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions.

"(c) In case of any labor dispute involving the Authority and such employees where collective bargaining does not result in agreement, the Authority shall submit such dispute to arbitration by a board composed of three persons, one appointed by the Authority, one appointed by the labor organization representing the employees, and a third member to be agreed upon by the labor organization and the Authority. The member agreed upon by the labor organization and the Authority shall act as chairman of the board. The determination of the majority of the board of arbitration, thus established shall be final and binding on all matters in dispute. If after a period of ten days from the date of the appointment of the two arbitrators representing the Authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the Federal Mediation and Conciliation Service to furnish a list of five

persons from which the third arbitrator shall be selected. The arbitrators appointed by the Authority and the labor organization, promptly after the receipt of such list shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term 'labor dispute' shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions, or benefits including health and welfare, sick leave, insurance or pension or retirement provisions but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, and the interpretation or application of such collective bargaining agreements and any grievance that may arise and questions concerning representation. Each party shall pay one-half of the expenses of such arbitration.

"(d) The Authority is hereby authorized and empowered to establish and maintain a system of pensions and retirement benefits for such officers and employees of the Authority as may be designated or described by resolution of the Authority; to fix the terms of and restrictions on admission to such system and the classifications therein; to provide that persons eligible for admission in such pension system shall not be eligible for admission to, or receive any benefits from, any other pension system (except social security benefits), which is financed or funded, in whole or in part, directly or indirectly by funds paid or appropriated by the Authority to such other pension system, and to provide in connection with such pension system, a system of benefits payable to the beneficiaries and dependents of any participant in such pension system after the death of such participant (whether accidental or otherwise, whether occurring in the actual performance of duty or otherwise, or both) subject to such exceptions, conditions, restrictions and classifications as may be provided by resolution of the

Authority. Such pension system shall be financed or funded by such means and in such manner as may be determined by the Authority to be economically feasible. Unless the Authority shall otherwise determine, no officer or employee of the Authority and no beneficiary or dependent of any such officer or employee shall be eligible to receive any pension or retirement or other benefits both from or under any such pension system and from or under any pension or retirement system established by an acquired transportation system or established or provided for, by or under the provisions of any collective bargaining agreement between the Authority and the representatives of its employees.

"(e) Whenever the Authority acquires existing transit facilities from a public or privately owned utility either in proceeding by eminent domain or otherwise, the Authority shall assume and observe all existing labor contracts and pension obligations. When the Authority acquires an existing transportation system, all employees who are necessary for the operation thereof by the Authority shall be transferred to and appointed as employees of the Authority, subject to all the rights and benefits of this title. These employees shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The Authority shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions; sick leave, health and welfare and pension or retirement provisions for employees. It shall assume the provisions of any collective bargaining agreement between such acquired transportation system and the representatives of its employees. The Authority and the employees, through their representatives for collective bargaining purposes, shall take whatever action may be necessary to have pension trust funds presently under the joint control of the

acquired transportation system and the participating employees through their representative transferred to the trust fund to be established, maintained and administered jointly by the Authority and the participating employees through their representatives. No employee of any acquired transportation system who is transferred to a position with the Authority shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits, than he enjoyed as an employee of such acquired transportation system."

(8) Section 79 of article XVI is amended to read as follows:

"Reduced Fares

"79. The District of Columbia, the Northern Virginia Transportation District, the Washington Suburban Transit District and the component governments thereof, may enter into contracts or agreements with the Authority to make equitable payments for fares lower than those established by the Authority pursuant to the provisions of article XIII hereof for any specified class or category of riders."

(b) The Commissioner of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a), to title III of the Washington Metropolitan Area Transit Regulation Compact with the States of Virginia and Maryland.

Approved July 13, 1972.

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SUPREME COURT OF THE UNITED STATES

No. 75-909

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

EDMUND G. BROWN, JR.,
GOVERNOR OF CALIFORNIA, ET AL.; and

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

ARIZONA, ET AL.

ORDER ALLOWING CERTIORARI.—Filed June 1, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is consolidated with Nos. 75-960, 75-1050 and 75-1055 and a total of two hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 75-960

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

MARYLAND, ET AL.

ORDER ALLOWING CERTIORARI.—Filed June 1, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is consolidated with Nos. 75-909, 75-1050 and 75-1055 and a total of two hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 75-1050

STATE AIR POLLUTION CONTROL BOARD, PETITIONER

v.

RUSSELL E. TRAIN, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY

ORDER ALLOWING CERTIORARI.—Filed June 1, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with Nos. 75-909, 75-960 and 75-1055 and a total of two hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 75-1055

RUSSELL E. TRAIN, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

DISTRICT OF COLUMBIA, ET AL.

ORDER ALLOWING CERTIORARI.—Filed June 1, 1976

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Supreme Court, U. S.
FILED
APR 26 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-909

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES, et al.,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, et al.,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

CALIFORNIA AIR RESOURCES BOARD et al.,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Attorney General of the State of California, on behalf of Edmund G. Brown, Jr., Governor of the

State of California, et al., pursuant to the order of this Court, responds hereby to the Petition for Writ of Certiorari to Review the Judgment of the United States Court of Appeals of the Ninth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit in *Brown* v. *Environmental Protection Agency* (Nos. 73-3306; 73-3305; 73-3307) dated August 15, 1975, is reported at 521 F.2d 827.

JURISDICTION

The jurisdiction of this Court was invoked by petitioner, Environmental Protection Agency, pursuant to 28 U.S.C. 1254(1). Petition for Writ of Certiorari, p. 2.

QUESTION PRESENTED

Whether the Clean Air Act empowers the Administrator of the Environmental Protection Agency to impose sanctions on a State, or on administrative officials of the State, should the State or the officials fail to administer and enforce an implementation plan adopted by the Administrator.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

The pertinent provisions and regulations are set forth in Appendix A, infra, pp. ~~1a–23a.~~ 5–22.

STATEMENT OF THE CASE

The opinion of the lower court (521 F.2d 827) accurately articulates the posture of the instant case. Petition for Writ of Certiorari, pp. 3a–7a.

REASONS FOR DENYING THE WRIT

The sole holding of the Court below is that the Clean Air Act does not authorize the "imposition of sanctions on a State or its officials for failure to comply with the administrator's regulations which directs the State to regulate the pollution-creating activities of those other than itself * * *." Petition for Writ of Certiorari, Appendix A, p. 9a.

It is submitted that this is an insufficiently important question of federal law to merit decision by this Court. Supreme Court Rules, Rule 19.

Even if the constitutional question had been decided by the Court below, it is submitted that it is so clear as to be almost a postulate of our federal system that a federal administrator may not employ the Commerce Clause to justify forcing State governors to propose state legislation as dictated by a federal Administrator, State legislators to consider and adopt the proposals, the Governor to sign the legislation, and State agencies to promulgate regulations as dictated by the Administrator, under the threat of fining, and perhaps jailing the Governor, dissenting legislators, and agency heads. This prop-

osition is not sufficiently in doubt as to require consideration by this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of
the State of California

CARL BORONKAY
Assistant Attorney General

JOEL S. MOSKOWITZ
Deputy Attorney General

By _____
JOEL S. MOSKOWITZ
Attorneys for Petitioners

April 1976

APPENDIX A
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

I. The Constitution of the United States provides in pertinent part:

Article I, Section 8:

> The Congress shall have Power * * *
>
> * * * * * *
>
> To regulate Commerce * * * among the several States * * *

Tenth Amendment:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

II. Sections 101, 107, 110, 113 and 302(e) of the Clean Air Act of 1967, 81 Stat. 485, as amended by the Clean Air Act Amendments of 1970, 84 Stats. 1676, 42 U.S.C. 1857 et seq., as amended by Section 302, 85 Stat. 464 and Section 4 of the Energy Supply and Environmental Coordination Act of 1974, Pub. L. No. 93-319, 88 Stat. 256, provide in relevant part:

Section 101 (42 U.S.C. 1857)

Congressional findings; purposes of subchapter.

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization,

industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

Section 107 (42 U.S.C 1857c-2)

Air quality control regions.

(a) Responsibility of State for air quality; submission of implementation plan.

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting

an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

Section 110 (42 U.S.C. 1857c-5)

State implementation plans for national primary and secondary ambient air quality standards.

(a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance. and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan

under paragraph (1), approve or disapprove such plan for each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A)(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and, (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan; (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources; (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standards; or

(ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c)(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph(2)) extend the three-year period referred to in subsection (a)(2)(A)(i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available al-

ternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D), of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 307 (a) (relating to subpenas) shall be applicable to any proceeding under this subsection.

* * * * *

Section 113 (42 U.S.C. 1857c-8)
Federal enforcement procedures.

(a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator

that it will enforce such plan (hereafter referred to in this section as 'period of Federally assumed enforcement'), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection

(or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

(3) violates section 111(e), 112(c), or 119(g); or

(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c)(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the

Administrator under subsection (a)(1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

(C) violates section 111(e), section 112(c), or section 119(g) shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

* * * * *

Section 302 (42 U.S.C. 1857h)

Definitions.

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

* * * * *

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

* * * * *

III. 40 C.F.R. Part 52 provides in pertinent part:

§ 52.23 (as amended Sept. 18, 1974, 39 Fed.Reg. 33512)

Violation and Enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a state implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements of this part if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain,

or if the person Governmental entity fails to comply with such schedule.

* * * * *

Subpart F—California

* * * * *

§ 52.242 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program to reduce emissions from in-use vehicles through identifying vehicles which need emission control-related maintenance and requiring that maintenance be performed.

(2) "Light-duty vehicle" means any gasoline-powered motor vehicle rated at 6,000 pounds GVW or less.

(3) All other terms used in this section that are defined in Appendix N to Part 51 of this chapter, are used herein with the meanings so defined.

(b) This section is applicable in the Metropolitan Los Angeles, San Diego, Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (hereinafter referred to as the Regions).

(c) The State of California shall establish an inspection and maintenance program applicable to all light-duty vehicles registered in the Regions that operate on streets or highways over which it has ownership or control. No later than June 1, 1974, the State shall submit legally adopted regulations to EPA establishing such a program. The State may exempt any class or category of vehicles which it finds are rarely used on public streets

and highways (such as classic or antique vehicles). The regulations shall include

(1) Provisions for inspection of all light-duty motor vehicles at periodic intervals no more than one year apart by means of a loaded test.

(2) Provisions for inspection failure criteria consistent with the emission reductions claimed in the plan for the strategy. These emission reductions are 15 percent for hydrocarbons and 12 percent for carbon monoxide. These criteria are estimated to include failure of 50 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles received within two weeks, the maintenance necessary to achieve compliance with the inspection standards. This shall include sanctions against noncomplying individual owners and repair facilities, retest of failed vehicles following maintenance, a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowedgeable operators to perform the tasks satisfactorily, and such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that, following inspection or maintenance, vehicles are not intentionally readjusted or modified in such a way as would cause them no longer to comply with the inspection standards. This might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle on October 1, 1975, and completing by September 30, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After September 30, 1976, the State shall not register or allow to operate on its streets or highways any light-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After September 30, 1976, no owner of a light-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new vehicle.

(f) The State of California shall submit no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations that it will propose for adoption. The compliance schedule shall also include:

(1) The date by which the State will recommend any needed legislation to the State legislature.

(2) The date by which necessary equipment will be ordered.

(3) A signed statement from the Governor and State Treasurer identifying the sources and amount of funds for the program. If funds cannot legally be obligated under existing statutory authority, the test of needed legislation shall be submitted.

O

Supreme Court, U. S.
FILED
APR 27 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-909

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

STATE OF ARIZONA, ET AL.

RESPONSE OF STATE OF ARIZONA, ET AL. TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRUCE E. BABBITT
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In the Supreme Court of the United States

OCTOBER TERM, 1975

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v.

STATE OF ARIZONA, ET AL.

RESPONSE OF STATE OF ARIZONA, ET AL. TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondents, STATE OF ARIZONA, et al., join with the Petitioner in the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit for these reasons:

1. There is a conflict among the circuits on the issue raised herein.

2. The question herein is an important one and should be decided by this Court.

Respondents submit that upon consideration by this Court, the decision of the United States Court of Appeals for the Ninth Circuit should be affirmed.

DATED this 23 day of April, 1976.

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Attorney General

ANTHONY B. CHING
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Attorney for State of Arizona
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159 State Capitol Building
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Three copies of the Response mailed this 23 day of April, 1976 to:

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- and -

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Nos. 75–909, 75–960, 75–1050, and 75–1055

Supreme Court, U. S.
FILED
SEP 29 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
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ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
v.
STATE OF MARYLAND, ET AL.

COMMONWEALTH OF VIRGINIA, EX REL.
STATE AIR POLLUTION CONTROL BOARD, PETITIONER
v.
RUSSELL E. TRAIN, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY

RUSSELL E. TRAIN, ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
v.
DISTRICT OF COLUMBIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

BRIEF FOR THE FEDERAL PARTIES

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75–909
ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
v.
EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

No. 75–960
ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
v.
STATE OF MARYLAND, ET AL.

No. 75–1050
COMMONWEALTH OF VIRGINIA, EX REL.
STATE AIR POLLUTION CONTROL BOARD, PETITIONER
v.
RUSSELL E. TRAIN, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY

No. 75–1055
RUSSELL E. TRAIN, ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
v.
DISTRICT OF COLUMBIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH, AND DISTRICT OF COLUMBIA CIRCUITS

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Ninth Circuit in *Brown* v. *Environmental Protection Agency* (Pet. No. 75–909, App. A) and *State of Arizona* v. *Environmental Protection Agency* (Pet. No. 75–909, App. C) are reported at 521 F. 2d 827 and 521 F. 2d 825, respectively. The opinion of the United States Court of Appeals for the Fourth Circuit in *State of Maryland* v. *Environmental Protection Agency* (Pet. No. 75–960, App. A) is reported at 530 F. 2d 215. The opinion of the United States Court of Appeals for the District of Columbia Circuit in *District of Columbia* v. *Train* (Pet. No. 75–1055, App. A; Pet. No. 75–1050, App. A) is reported at 521 F. 2d 971.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit in *Brown* v. *Environmental Protection Agency* was entered on August 15, 1975 (Pet. No. 75–909, App. A). By order of November 3, 1975, Mr. Justice Douglas extended the time within which to file a petition for a writ of certiorari to and including December 18, 1975. By order of December 8, 1975, Mr. Justice Rehnquist further extended the time within which to file a petition for a writ of certiorari to and including December 24, 1975. The judgment of the Court of Appeals for the Ninth Circuit in *State of Arizona* v. *Environmental Protection Agency* (Pet. No. 75–909, App. C) was entered on September 8, 1975. By order of December 1, 1975, Mr. Justice Rehnquist extended the time within

which to file a petition for a writ of certiorari to and including December 18, 1975, and by order of December 8, 1975, he extended the time within which to file a petition for a writ of certiorari to and including December 24, 1975. The petitions of both parties were filed on December 24, 1975 and were granted on June 1, 1976 (A. 978).

The judgment of the Court of Appeals for the Fourth Circuit in *State of Maryland* v. *Environmental Protection Agency* was entered on September 19, 1976 (Pet. No. 75–960, App. A). By order of December 11, 1975, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including January 12, 1976. The petition was filed on January 7, 1976 and was granted on June 1, 1976 (A. 979).

The judgment of the Court of Appeals for the District of Columbia Circuit in *District of Columbia* v. *Train* was entered on October 28, 1975 (Pet. No. 75–1055, App. A). The petitions for writs of certiorari were filed on January 26, 1976 and granted on June 1, 1976 (A. 980–981).

The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent provisions are set forth in Appendix A, *infra*.

QUESTIONS PRESENTED

1. Whether the Administrator of the Environmental Protection Agency has authority under the Clean Air Act to require a State to manage its transportation system so as to decrease air pollution resulting from motor vehicle traffic.

2. Whether, if the Administrator has such statutory authority, the Clean Air Act is in this respect a valid exercise of Congress' power under the Commerce Clause of the Constitution.

3. Whether the requirement that the Commonwealth of Virginia contribute to the purchase of buses is consistent with the Washington Metropolitan Area Transit Authority Compact.

STATEMENT

A. STATUTORY BACKGROUND

As amended in 1970, the Clean Air Act prescribes a comprehensive regulatory scheme for reducing emissions of certain pollutants into the ambient air in order "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (Section 101(b)(1)).[1] In concluding that it was necessary to attain this objective, Congress found that (Section 101(a)(2)):

> [T]he growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation.

[1] Section references to the Act are used in the text; cross references to the United States Code citations appear in the Appendix.

The Administrator of the Environmental Protection Agency (EPA) must establish standards governing maximum concentrations of particular pollutants in the air, but the Act gives States and local governments the primary responsibility for promulgating enforceable regulations to establish and implement air quality control programs (Sections 101(a)(3), 107(a)). The Act requires each State to submit to the Administrator a plan for "implementation, maintenance, and enforcement" of the national primary and secondary ambient air quality standards[2] for every portion of the State within nine months after the Administrator promulgates those standards. Section 110(a)(1). Within four months after its submission, the Administrator must approve the State's implementation plan if it satisfies the statutory criteria; if it does not, he must promulgate a substitute plan for the State (Section 110 (a)(2) and (c)).

The implementation plan must provide a regulatory

[2] National primary ambient air quality standards are "ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator * * * are requisite to protect the public health." Section 109(b)(1). A national secondary ambient air quality standard is "a level of air quality the attainment and maintenance of which in the judgment of the Administrator * * * is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [each] air pollutant [for which criteria have been established] in the ambient air." Section 109(b)(2). The "public welfare" includes "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Section 302 (h).

scheme for controlling emissions from stationary and moving sources of pollution to the extent necessary to attain the national standards within each of the State's air quality control regions (Section 110). The procedures necessary to achieve and maintain the standards will vary with the conditions in the different air quality control regions; more stringent measures are necessary in severely polluted urban areas.[3] The Act requires each state implementation plan to provide for the attainment of the primary air quality standards throughout the State within three years from the date the Administrator approves the plan, and the secondary standards within a reasonable time (Section 110(a)(2)(A)). In order to do so, each plan must include, for each air quality control region: (1) regulations limiting emissions from old and new pollution sources; (2) schedules for compliance with the limitations; (3) provisions for collecting, analyzing and making available emissions data; (4) provisions for such additional methods of pollution control as may be necessary, including land-use and transportation controls; (5) a description of the State's legal authority and resources to implement its plan; (6) a procedure for revision of its plan; (7) provisions for intergovernmental cooperation; and (8) to the extent necessary and practicable, a procedure for inspecting and testing motor vehicles.

[3] The dispute here involves the plans for several such regions: the National Capital Area (Washington, D.C., and its Maryland and Virginia suburbs); Metropolitan Baltimore; Metropolitan Los Angeles; San Diego; the San Francisco Bay Area; Sacramento; and the San Joaquin Valley.

B. FACTUAL BACKGROUND

On April 30, 1971, the Administrator, acting pursuant to Section 109 of the Act, promulgated national primary and secondary air quality standards for six pollutants. 36 Fed. Reg. 8186 (April 30, 1971). Four of these pollutants—carbon monoxide, photochemical oxidants, nitrogen dioxide and hydrocarbons—result chiefly from motor vehicle emissions, which constitute forty-eight percent of the total of approximately 190 million tons of air pollutants produced in this country annually.[4] The statute accordingly required that each State submit its implementation plan for these six pollutants to the Administrator for approval within 9 months—no later than January 30, 1972—and he was to act on all plans by May 31, 1972 (Section 110(a)).

As noted, Section 110 of the Act requires that transportation controls be part of a state implementation plan when they are necessary to attain or maintain the primary air quality standards.[5] The Administra-

[4] Motor vehicles emit carbon monoxide (CO) directly into the air. Emitted hydrocarbons, however, combine with oxides of nitrogen (NOx) in the presence of sunlight to produce the secondary pollutant, photochemical oxidants (smog). See Department of Health, Education, and Welfare, Nos. AP-63 and AP-64, *Air Quality Criteria for Photochemical Oxidants* and *Air Quality Criteria for Hydrocarbons* (March, 1970); S. Rep. No. 91-1196, 91st Cong., 2d Sess. 25-28 (1970); H.R. Rep. No. 91-1146, 91st Cong., 2d Sess. 6, 11-13 (1970); Committee Print, Serial No. 93-18, A Legislative History of the Clean Air Amendments of 1970, 93d Cong., 2d Sess. (1974) ("Leg. Hist."), pp. 381-382 (S. Debate on S. 4358, Sept. 22, 1970, Sen. Montoya); Leg. Hist. 228 (S. Debate on S. 4358, Sept. 21, 1970, Sen. Muskie).

[5] Transportation controls include "any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing

tor initially decided to permit the States extra time to submit transportation control plans due to the lack of experience with such controls and the scarcity of available data. Thus, while the state implementation plans were due on January 30, 1972, he deferred the date for state submission of any necessary transportation control plans until February 15, 1973. 36 Fed. Reg. 15486 (August 14, 1971). He also extended for two years the date for attainment of the primary air quality standards in areas where transportation control measures were necessary. See generally 38 Fed. Reg. 30626 (November 6, 1973); 37 Fed. Reg. 10842 (May 31, 1972).

The deferrals and extensions were challenged in the United States Court of Appeals for the District of Columbia Circuit (see Section 307(b)(1)); on January 31, 1973, that court declared the Administrator's actions invalid. *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, 475 F. 2d 968. The effect of the delays, the court concluded, was "to interfere with the Congressional purpose of attaining clean air by a date certain, May 31, 1975, subject only to certain limited and well defined statutory extensions" (475 F. 2d at 970). The court ordered the Administrator to rescind all previously granted deferrals for the submission of transportation control plans as well as the two-year extensions for attainment

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emissions from individual motor vehicles, or altering existing modal split patterns [patterns of use of various transportation methods] that is directed toward reducing emissions of air pollutants from transportation sources." 40 C.F.R. 51.1(r). See S. Rep. No. 91-1196, 91st Cong., 2d Sess. 2, 12-14 (1970).

of air quality, and ordered him to require each State to submit by April 15, 1973, an appropriate plan to attain the primary air quality standards by May 31, 1975. If a State failed to submit such a plan, the Administrator would have to prepare and publish a substitute plan (475 F.2d at 970–971; Section 110(c)).

The Administrator promptly notified the twenty-two affected States of these developments and amended his previous actions on state plans to comply with the court order. 38 Fed. Reg. 7323 (March 20, 1973). The State of California failed to submit a transportation control plan to EPA by April 15, 1973. Accordingly, the Administrator disapproved the California plan for oxidants and carbon monoxide in five regions, 38 Fed. Reg. 16550, 16556, 16564 (June 22, 1973).[6] The other States who are respondents have submitted transportation control plans to the Administrator. However, these plans were in some respects inadequate to insure attainment and maintenance of the primary air quality standards by May 31, 1975, and therefore the plans were disapproved in part. 38 Fed. Reg. 16550, 16555–16569 (June 22, 1973) (Arizona, Maryland, and Virginia). Each of the States subsequently supplemented its plan to correct some of the deficiencies identified by the Administrator. To the extent possible, the Administrator approved the plans as supplemented. To the extent they were still inadequate, he promulgated substitute measures, supple-

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[6] He had previously disapproved a plan for Los Angeles, 37 Fed. Reg. 10842, 10852 (May 31, 1972).

menting or modifying the state proposals only as necessary to assure attainment of the required air quality.[7]

The substitute measures for Arizona were promulgated on December 3, 1973 (38 Fed. Reg. 33368), for California on November 12, 1973 (38 Fed. Reg. 31232),[8] for the Baltimore Air Quality Control Region of Maryland on December 12, 1973 (38 Fed. Reg. 34240), and for the National Capital Interstate Air Quality Control Region (consisting of Washington,

[7] *E.g.*, 38 Fed. Reg. 30628 (November 6, 1973); 38 Fed. Reg. 33702 (December 6, 1973). In the National Capital Area, for example, the District of Columbia and Virginia proposals for inspection and maintenance of light-duty vehicles were adequate and were approved in full; the substitute plans for the District and Virginia contain only requirements for inspection and maintenance of medium and heavy duty vehicles. 38 Fed. Reg. 33705 (December 6, 1973); Pet. No. 75-1055, App. 62a-65a, 106a-109a. Although Maryland also proposed an inspection and maintenance program for light-duty vehicles, it was not described in detail and the substitute plan for Maryland was designed to establish a program similar to those of the other jurisdictions. 38 Fed. Reg. 33705 (December 6, 1973). The three jurisdictions also proposed to establish exclusive bus lanes in specified highway corridors and to expand bus service in the National Capital Area by adding 750 buses to the existing fleet. The Administrator approved these proposals except to the extent that they failed to assure that the measures would actually be implemented in a timely manner; to remedy that deficiency, he promulgated supplementary requirements to assure that the necessary actions would be taken on schedule. 38 Fed. Reg. 33705-33706 (December 6, 1973; Pet. No. 75-1055, App. 104a-105a.

[8] Before the substitute plan was promulgated, the legislature of California authorized the Governor to implement a mandatory program of automobile emission control inspection in the Los Angeles air quality control region, and later to expand the program to other parts of the State. Ann. Cal. Code, Bus. & Prof., Section 9889.50, *et seq.* (1973).

D.C., and its Virginia and Maryland suburbs) on November 15, 1973 (38 Fed. Reg. 31536), and on December 6, 1973 (38 Fed. Reg. 33702).

Although the provisions vary somewhat from State to State, the regulation for inspection and maintenance of automobiles in Baltimore illustrates the type of requirements imposed by the Administrator.[9] The regulation, 40 C.F.R. 52.1095: (1) requires the State of Maryland to establish an inspection and maintenance program applicable to vehicles registered in Baltimore which operate on public streets or highways over which it has ownership or control (40 C.F.R. 52.1095(c)); (2) requires the State to submit by February 1, 1974, "a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program," including the text of "needed statutory proposals" and "regulations that it will propose for adoption," the date by which the State will recommend needed legislation to the State legislature, the date by which equipment will be ordered, and a statement by the Governor or his designee identifying the sources and amounts of funds for the program, plus the text of needed legislation, if any (40 C.F.R. 52.1095(f)); (3) requires the State by April 1, 1974,

[9] In addition to the inspection and maintenance programs, the various substitute plans required the States to take such actions as establishing bicycle and bus lanes, submitting compliance schedules for implementing the commitments in their plans to purchase buses, requiring older cars to be fitted with emission control devices, limiting parking on public streets, and establishing computerized carpool information services. The nature of these requirements is described in 38 Fed. Reg. 30628-30631 (November 6, 1973).

to submit legally adopted regulations establishing the program, including provisions for yearly inspection, emission standards, maintenance of failed vehicles, anti-tampering measures, designation of a responsible state agency, and completion of the first inspection cycle by July 31, 1976 (40 C.F.R. 52.1095(c)); (4) prohibits the State after July 31, 1976, from registering or allowing to operate on its public streets or highways any noncomplying vehicles (40 C.F.R. 52.1095 (d)); and (5) prohibits owners from operating noncomplying vehicles after July 31, 1976 (40 C.F.R. 52.1095(e)).

In explaining these requirements, the Administrator noted that extensive state highway systems encourage the use of private cars, the major sources of four of the six pollutants to be controlled. He therefore concluded that highways are indirect sources of pollutants, and the State, as owner and operator of the sources, can be directed, like any other operator of a pollution source, to conduct its pollution causing activities in a way that will minimize the pollution released (38 Fed. Reg. 30632–30633, November 6, 1973). Thus, the Administrator's regulations directed each jurisdiction here involved to submit schedules showing when it would establish programs—including inspection and maintenance programs and bus lane programs—to bring its operation of the highways in the various air quality control regions involved into compliance with the applicable implementation plan (40 C.F.R. 52.242, 52.244, 52.490, 52.1089, 52.2441, 52.2442, 52.137–52.139, 52.1095(f)). California, Arizona, Maryland, the District of Columbia and Virginia thereupon petitioned the courts of appeals pursuant to Section 307 (b)(1) of the Act for review of the Administrator's regulations.

C. THE PROCEEDINGS BELOW

1. *Edmund G. Brown, Jr., et al.* v. *Environmental Protection Agency* (Pet. No. 75–909, App. 1a). After preliminary proceedings, the court and the parties determined that the question of the scope of EPA's authority to require compliance by the State was ripe for immediate adjudication. Other constitutional and statutory questions were to be heard at a later date.

Refusing to accept the Administrator's rationale for treating the State, in its role of owner and operator of its highways, as a creator of the pollution (*id.* at 26a), the court concluded that "the Act, as we see it, permits sanctions against a state that pollutes the air, but not against a state that chooses not to govern polluters as the Administrator directs" (*id.* at 11a). The court concluded that neither Section 113(a)(2), which provides for federal enforcement of an implementation plan when the State fails to do so, nor any other part of the Act explicitly permits the Administrator "to compel the states to administer and enforce regulations promulgated by him designed to govern polluters, potential or actual, other than the state * * *" (*id.* at 18a). The court declined to infer the presence of any such power, because "Congress would not have intended to take such a step in the light of the delicacy with which federal-state relations always have been treated by all branches of the Federal Government in this obscure manner" (*id.* at 16a). The court did recognize, however, that "our reading of section 113 and our percep-

tion of the structure of the Act is not unambiguously supported by the applicable legislative history" (*id.* at 19a).

Although resting its decision on statutory interpretation, the court discussed the constitutional issues that would be raised if the statute authorized the Administrator to require the States to regulate private pollution causing activities. Economic activity by the States that substantially affects interstate commerce is subject to federal regulation under the Commerce Clause, but no case, according to the court of appeals, "holds or even suggests that a State's exercise of its police power with respect to an economic activity which affects interstate commerce is itself an economic activity or 'species of commercial intercourse' subject to regulation by Congress" (*id.* at 27a). The court concluded that the federal government cannot compel a State to regulate air pollution unless the pollution is solely caused by a source or activity owned or operated by the State (*id.* at 10a–11a). Otherwise, the court suggested, States might be deprived of control over the manner in which their tax revenues are spent and might become simply tools for effectuating federally-prescribed policies (*id.* at 32a–37a).

2. *State of Arizona* v. *Environmental Protection Agency* (Pet. No. 75–909, App. 40a). Relying on its decision in *Brown* v. *Environmental Protection Agency*, *supra*, the court of appeals held that "the Clean Air Act does not authorize the imposition of sanctions against the State of Arizona or its officials for failure to comply with" the EPA amendments to the state implementation plan (*id.* at 43a).

3. *State of Maryland, et al.* v. *Environmental Protection Agency* (Pet. No. 75–960, App. 1a). The court of appeals focused upon the provisions in the Administrator's substitute transportation control plan requiring the State to submit "legally adopted regulations" and the "text of needed legislation," and concluded that "EPA has directed Maryland and her legislature to legislate under pain of civil and criminal penalties * * *" (*id.* at 22a).[10] In order to avoid the serious constitutional issues raised by this direction, the court decided the case on statutory grounds (*id.* at 27a–28a). The court held that the Administrator exceeded his authority in promulgating the contested regulations, because Section 110(c) authorizes the Administrator merely to prepare "regulations to be applied [by EPA] within the boundaries of a state if it does not act in a manner approved by the EPA" (*id.* at 29a, 31a, 32a).

4. *District of Columbia, et al.* v. *Train* (Pet. No. 75–1055, App. 1a). As did the court in the *Maryland* case, the United States Court of Appeals for the District of Columbia Circuit held that the Clean Air Act did not authorize the Administrator to require the States to adopt legislation or regulations to establish a transportation control program found necessary by EPA. Thus, if a State fails to submit an acceptable plan, the Administrator must promulgate the regulations to be applied within the State; he cannot compel the State to do so (*id.* at 20a–28a). But the court of appeals further held

[10] Section 113(c) provides for criminal penalties under certain circumstances. The Administrator has consistently denied any intention to seek these sanctions against a State. See *infra*, n. 32.

that when such regulations have been promulgated, the Act authorizes the Administrator to require the States to administer them. The court then considered the constitutionality of the Act as so interpreted, and concluded that a State could be required to implement federal regulations designed to control pollution the State caused directly (*e.g.*, through operation of state-owned vehicles) or indirectly (*e.g.*, through the ownership of state roads). Thus, a State could be required to designate exclusive bus lanes and purchase additional buses, since those are valid regulations of state roads as "indirect" sources (*id.* at 36a). The court also found federal power extended to requiring the States to prohibit the use of state roads by vehicles that do not comply with federal standards, but it determined that that power could not constitutionally extend to requiring that the State implement federally promulgated programs to identify non-conforming vehicles (*id.* at 40a–49a). The court thus upheld the exclusive bus lane and increased bus fleet regulations but remanded the inspection and maintenance and the retrofit regulations to the Administrator to promulgate complete, federally enforceable regulations as necessary to cure the deficiencies in the state plans (*id.* at 48a–49a).

SUMMARY OF ARGUMENT

The Administrator's conclusion that the States are responsible as owners and operators of the public roads for the pollution from motor vehicles is reasonable and consistent with previous decisions of this Court and

the Congress in related fields. Moreover, the Act authorizes him to direct the States to control the pollution caused by the functioning of the roads. The Constitution does not prohibit this narrow intrusion into the State's activities.

Section 110 of the Act requires that each State must have an implementation plan providing for the attainment of primary ambient air quality standards throughout the State within three years. If a State fails to propose an adequate implementation plan, the Administrator must promulgate one. The 1970 Amendments to the Clean Air Act make no distinction between plans proposed by the States and substitute plans promulgated by the Administrator; both must include effective transportation control measures if necessary to achieve the ambient air quality standards, and the State must comply with these measures. This is demonstrated not only by the language and structure of Section 110, but also by the fact that Section 113(a)(1) provides that whenever the Administrator finds that "any person" is in violation of an applicable implementation plan, the Administrator shall take steps to compel such person to comply with the plan's requirements. The term "person" includes a State (Section 302(e)). The Act and its legislative history both make clear that Congress intended to require the States to conform their pollution-creating activities to federal standards, and that it recognized that those activities included the ownership and operation of public highways.

As so interpreted, the Act is constitutional. The

Commerce Clause amply supports a federal requirement that the States control the pollution they cause, directly or indirectly. The congressional findings that air pollution has an adverse impact on the national health and economy and that local controls have proven inadequate are amply supported by the Act's legislative history.

The requirement that a State operate its highways in a way which limits the pollution they cause does not threaten the separate and independent existence of the State (cf. *National League of Cities* v. *Usery*, No. 74–878, decided June 24, 1976). That requirement imposes no substantial costs upon the States nor does it displace a wide range of state decisions about how traditional state functions will be performed. Instead, the regulations at issue here are narrowly drawn to affect only one area of state activity—its transportation policy—and only that part of the activity that specifically creates the pollution problem. Even in that narrow area, state policies are displaced only to the extent necessary to assure compliance with federal standards and each State remains free to replace the federal regulations with adequate measures of its own choosing. None of the required programs need be expensive; the States will not be required to make substantial re-allocations of resources available for other public services in order to satisfy the federal requirements. Moreover, the requirements at issue here, like those in *Fry* v. *United States*, 421 U.S. 542, reflect the need for federal action to combat a national emergency. Finally,

the fact that the regulations require some affirmative state action does not render them unconstitutional.[11]

ARGUMENT

INTRODUCTION

Contrary to the court's statements in *Brown* v. *Environmental Protection Agency*, the Administrator's argument is not that a State's[12] exercise of its governmental power over commerce is itself an economic activity subject to federal control under the Commerce Clause (Pet. No. 75–909, App. 27a–30a).[13] The Administrator claims only that the States, no less than private individuals, may be required to take steps to reduce the

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[11] The Commonwealth of Virginia is not required, as it claims, to purchase buses in contravention of the interstate compact to which it is a party. Instead, 40 C.F.R. 52.2435(e) simply requires the Commonwealth to provide assurances consistent with the compact that commitments for the bus purchases have been made by the parties to the compact. The Commonwealth itself agreed to contribute to bus purchases in the plan it submitted to the Administrator. In any event, the Commonwealth's responsibility to operate its highways in a way which reduces air pollution to acceptable levels cannot be avoided by the manner in which it has chosen to make public transportation available to its citizens.

[12] Hereafter, except when the context indicates otherwise, references to a "State" include local governments and the District of Columbia (see Section 302(d)(e)).

[13] The Administrator's position is similarly misconceived in an article written by a former law extern of Judge Sneed. Salmon, *The Federalist Principle: The Interaction of the Commerce Clause and the Tenth Amendment in the Clean Air Act*, 2 Colum. Jour. of Env. Law 290, 324 *et seq.* (1976).

pollution caused by their own activities,[14] and that it makes no difference whether the state activity causes the pollution directly by, for example, operating municipal incinerators and state vehicles, or indirectly, by permitting private vehicles to use the state highways in a way that causes unacceptable levels of pollution. In either case, the Administrator may require the State to conduct its pollution-causing activities in a manner consistent with the reduction of air pollution. The State is, in either case, subject to federal regulation only to the extent it is responsible for the pollution, and only when its responsibility stems not from mere failure to regulate private activities, but from its ownership and control of the facilities used in the process of contamination of the air. The power asserted by the Administrator is only over the State as polluter, not over the State as State.

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[14] The Administrator has never asserted any power to compel the State to carry out its governmental responsibilities under an implementation plan by, for example, monitoring ambient air quality and enforcing the emission controls applicable to private stationary sources. Nor does he contend that he can direct the State to adopt laws or regulations creating transportation control plans that comply with the Act (see Pet. No. 1055, App. 27a-29a; Pet. No. 75-909, p. 17, n. 15). He thus concedes the necessity of removing from the regulations all requirements that the States submit legally adopted regulations; the regulations contain no requirement that the State adopt laws. If the State fails to adopt an adequate plan, the Administrator must promulgate a comprehensive substitute plan, specifying such matters as the types of vehicles to be inspected, the standards that must be met, and the frequency of inspection. The State must then implement the program by establishing the necessary inspection facilities, conducting the inspections, refusing to register non-conforming vehicles, and enforcing its registration laws.

Although two of the three courts below agreed that a State may be required to conform its pollution-creating activities to federal standards,[15] they failed to recognize that the ownership and operation of public highways is such a pollution-creating activity.[16] Recognition of that principle is, however, fundamental to the Administrator's position on both the statutory and constitutional issues here presented. The principle rests on a firm factual basis, and there is substantial precedent for holding persons responsible for the indirect, as well as the direct, results of their activities.

Before promulgating substitute transportation control plans, the Administrator spelled out the factual basis for the conclusion that a State may properly be required to control the pollution emanating from the roads it owns and operates (38 Fed. Reg. 30632–30633, November 6, 1973):

> Transportation is a necessary service. In our society, the form in which it is provided depends overwhelmingly on the regulatory, taxing and investment decisions made at all levels of government.

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[15] Pet. No. 75-909, App. 10a-11a; Pet. No. 75-1055, App. 36a; the court in No. 75-960 did not address the issue.

[16] The court in *District of Columbia* v. *Train* (Pet. No. 75-1055, App. 36a, 41a) did recognize this principle to a limited extent; it agreed that the State's responsibility as an indirect creator of pollution on public roads justified requiring it to establish exclusive bus lanes, to purchase additional buses, and to prohibit use of these roads by cars not conforming to federal standards. But it concluded that the State's responsibility did not extend to implementing inspection or retrofit programs to identify non-conforming cars (*id.* at 28a-33a, 37a-49a). The Administrator contends that the court of appeals erred in this respect.

By building and maintaining roads and highways, by licensing vehicles and operators, by providing a system of traffic laws, and in many other ways, government has encouraged the growth of automobile use to its present levels. There is nothing inevitable about such a choice. Governments could equally well have chosen to discharge their basic function of maintaining a transportation system in ways that would have discouraged the use of single-passenger automobiles, and encouraged the use of mass transit. But often they have not.

The production of food, electricity, and other consumer and industrial goods is as necessary in our society as transportation. In each case, the Clean Air Act authorizes regulations requiring such an activity, whether State or private, to be undertaken in the least polluting way in order to attain and maintain the air quality standards. There is no valid distinction between such production facilities and the State-owned automotive transportation facilities. In a comparable situation, the Supreme Court has held that State-owned rail transportation facilities must comply with Federal safety regulations [*United States* v. *California*, 297 U.S. 175].

A direct source of air pollution is one

from which pollution is emitted directly into ambient air. Direct sources include not only automobiles and other vehicles, but also the facilities on which they are located during their operation—parking facilities and roads. Pollution is emitted directly into the ambient air from such facilities, and often the most feasible method of reducing it is by imposing restrictions on their owners and operators.

Many such facilities may also be viewed as indirect sources of air pollution. An indirect source is one that encourages mobile source pollution at locations not necessarily coincident with the source itself by serving as a trip attraction for automobile drivers, or which provides a parking or driving convenience. Thus, the availability of ample low-cost parking facilities and high-speed freeways influences individuals to use vehicles with as few as one person in them, rather than less-polluting modes of transit. Such facilities may legitimately be charged not only with the pollution arising directly from their premises, but also with the total pollution in the region emitted by the traffic increase which they encourage.

For these reasons, the Administrator has concluded that regulations placing restrictions on parking and on the use of

road space are essential to reduce the amount of air pollution generated by automobiles, and that they are valid exexercises of EPA's regulatory authority.

The Administrator is also promulgating regulations requiring that vehicles allowed to operate on public roads be inspected or "retrofitted" with emission control equipment. Use of public roads by large numbers of publicly registered and regulated vehicles without either proper maintenance or adequate control equipment also causes damage to health. The requirement that the road owners and the licensing and regulating authorities prohibit such use is a reasonable means of preventing such damage.

Direct Federal enforcement and massive, duplicative Federal programs aimed at vehicles on an individual basis were not the means contemplated by the Act to solve these problems. It is clearly necessary that implementation of transportation control plans be carried out at the State and local level. The Chairman of the House Committee that reported out the amendments to the Act described their purpose as follows:

> If we left it all to the Federal Government, we would have about everybody on the payroll of the United States. We know this is not

> practical. * * * [116 Cong. Rec. 19204 (1970).]

The Administrator's conclusion that indirect, as well as direct, sources of pollution are subject to control under the Act has been upheld in several circuits. *South Terminal Corporation* v. *Environmental Protection Agency*, 504 F. 2d 646, 668–669 (C.A. 1) (control of parking facilities); *Friends of the Earth* v. *Environmental Protection Agency*, 499 F. 2d 1118, 1125 (C.A. 2) (on-street parking restrictions); *District of Columbia* v. *Train*, 521 F. 2d 971 (Pet. No. 75–1055, App. 36a, 41a) (bus lanes, bus purchases, and prohibition of road use by nonconforming vehicles); *Pennsylvania* v. *Environmental Protection Agency*, 500 F. 2d 246, 261 (C.A. 3) (inspection and maintenance programs, retrofitting, bikeways, bus lanes, and parking restrictions).[17]

This Court has recognized similar indirect responsibilities in closely analogous situations. It has held that an airport, and not the airlines that use it, takes the air easement over adjacent lands damaged by aircraft

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[17] It is not a novel idea that those who provide transportation facilities for use by others are responsible for controlling the manner in which the facilities are used. For instance, 45 U.S.C. 6 requires that "[a]ny common carrier * * * by railroad * * * permitting to be hauled or used on its line any car in violation of [federal safety requirements] * * * shall be liable to a penalty of $250 for each and every such violation". That statute was applied in *United States* v. *Northwestern Pac. R. Co.*, 235 Fed. 965, 968-969 (N.D. Cal.), to hold the railroad owning the tracks responsible for defective cars hauled by another over its rails. The statute also applies to a State which operates a railroad, *United States* v. *California*, 297 U.S. 175. Cf. 49 U.S.C. (Supp. V) 1511(a) (airlines may not transport persons or property unless permission to conduct security inspection is granted).

noise (*Griggs* v. *Allegheny County*, 369 U.S. 84, 89). The airplanes that created the noise were no more the property of the airport owners than the private cars are the property of the States. But the airport owner, like the highway owner, indirectly caused the adverse environmental effect and was legally responsible for providing the remedy. Similarly, the Court has held that a State is responsible under the federal common law of nuisance for the discharge of sewage into public waters, even though it is evident that the State did not itself directly create the pollutants discharged. *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 106–108. As the State can be required to limit the adverse effects on public waters of pollution discharged by others using the sewer system, so it can be required to limit the adverse effect on the public air of pollution discharged by others using its highways. The principle remains the same: an owner or operator of a facility is a polluter, whether he causes the pollution directly or indirectly.[18]

I.

THE ADMINISTRATOR HAS AUTHORITY UNDER THE CLEAN AIR ACT TO PROMULGATE REGULATIONS ENFORCEABLE AGAINST THE STATES AS POLLUTERS.

As this Court stated in *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 63–64, Congress

[18] We recognize that when a State, private person, or corporation causes pollution indirectly, others share responsibility for the pollution. But that means only that the federal controls can be applied to each of the groups jointly responsible, not that joint action insulates any group that bears a substantial responsibility.

reviewed the disappointing performance of the States under earlier statutes encouraging and assisting them to take effective steps to control air pollution, and found it necessary to approach the problem differently by "taking a stick to the States" in the 1970 Amendments to the Clean Air Act. Under these amendments, "the States were no longer given any choice as to whether they would meet [the] responsibility * * * to attain air quality of specified standards, and to do so within a specified period of time" (*id.* at 64–65). See also *Union Electric Co.* v. *Environmental Protection Agency*, No. 74–1542, decided June 25, 1976, slip op. 9; *Pennsylvania* v. *Environmental Protection Agency, supra*, 500 F. 2d at 258. One of the choices removed from the States was whether they would conduct their own pollution-causing activities in accordance with applicable implementation plans—the congressional "stick" included the grant of authority to the Administrator to compel state compliance with such plans. In refusing to recognize this basic change in approach, the courts below misread the Act[19] and failed to recognize its remedial purposes. See *Abbott Laboratories* v. *Portland*

[19] They did so in order to avoid constitutional questions (Pet. No. 909, App. 9a, 24a; Pet. No. 960, App. 27a-28a). But as Judge Friendly points out, this technique of statutory construction is unlikely to reflect congressional intent (Friendly, "Mr. Justice Frankfurter and the Reading of Statutes", in *Benchmarks* 210-212 (1976)): "It does not seem in any way obvious, as a matter of interpretation, that the legislature would prefer a narrow construction which does not raise constitutional doubts to a broader one which does raise them. For there is always the chance, usually a good one, that the doubts will be settled favorably, and if they are not, the conceded rule of

Retail Druggists Assoc., Inc., No. 74–1274, decided March 24, 1976; *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 491; *Weinberger* v. *Bentex Pharmaceuticals*, 412 U.S. 645, 653.

A. SECTION 110 REQUIRES THE ADMINISTRATOR TO PROMULGATE AN ADEQUATE IMPLEMENTATION PLAN IF A STATE FAILS TO DO SO.

The requirement of Section 110 of the Act is absolute: each State must have an implementation plan that provides for the attainment of the primary ambient air quality standards in its air quality control regions within three years from the date the plan goes into effect (Section 110(a)(2)(A)(i)). See *Union Electric*

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construing to avoid unconstitutionality will come into operation and save the day. * * *

"Although questioning the doctrine of construction to avoid constitutional doubts is rather like challenging Holy Writ, the rule has always seemed to me to have almost as many dangers as advantages. For one thing, it is one of those rules that courts apply when they want and conveniently forget when they don't —some, perhaps, would consider that to be a virtue. * * * Some considerations advanced in its favor, such as the awesome consequences of 'a decree of unconstitutionality,' overlook that if the Court finds the more likely construction to be unconstitutional, another means of rescue—the principle of construing to avoid unconstitutionality—will be at hand. The strongest basis for the rule is thus that the Supreme Court ought not to indulge in what, if adverse, is likely to be only a constitutional advisory opinion. While there is force in this, the rule of 'construing' to avoid constitutional doubts should, in my view, be confined to cases where the doubt is exceedingly real. Otherwise this rule, whether it be denominated one of statutory interpretation or, more accurately, of constitutional adjudication—still more accurately, of constitutional nonadjudication—is likely to become one of evisceration and tergiversation." (Footnotes omitted.)

Co. v. *Environmental Protection Agency, supra*, slip op. at 10–17. Extensions of time are permitted, but only for up to a total of three years.[20] The States are to develop the plans, and so long as the plan selected will in fact attain and maintain the primary air quality standards, "the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation." *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 79.[21]

Depending on the kind of pollution sources found in a State and the severity of its pollution problems, attainment of the primary standards by the statutory deadline may require control of State and Federal sources as well as those owned by private parties.[22] Moreover, to be adequate a plan may have to contain requirements for control of pollution not only from conventional State sources, such as incinerators, but also from State-owned indirect sources, such as parking garages and highways.

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[20] Section 110(e) authorizes the Administrator, upon application of a Governor of a State, to extend the three-year period by up to two years if the "necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period." Section 110(f) authorizes the Administrator to grant an additional year's extension, also for technological reasons, but only if appropriate findings are made after an adjudicatory hearing.

[21] The State must, however, include transportation controls (and specifically periodic inspection and testing of motor vehicles) in its plan if necessary to attain or maintain air quality standards (Section 110(a)(2)(B),(G)).

[22] Section 118 of the Act (42 U.S.C. 1857f) requires that federal installations conform to established emissions limitations and compliance schedules. See *Hancock* v. *Train*, No. 74-220, decided June 7, 1976.

The failure of a State to develop an adequate plan does not excuse it from the requirement of Section 110(a)(2). That requirement remains absolute; the State must have an adequate plan. In those circumstances, the Act does not allow the Administrator to grant the State an additional extension of time or to compromise timely attainment of the primary standards by approving plans that omit measures necessary for that purpose. The Act simply commands the Administrator to prepare a plan "for a State" (Section 110(c)). In doing so, he necessarily chooses among the variety of emission limitations originally available to the State.[23]

B. A SUBSTITUTE IMPLEMENTATION PLAN MAY INCLUDE PROVISIONS APPLICABLE TO THE STATE AS A POLLUTER.

If control of state-operated sources of pollution is necessary to attain the primary air quality standards within the specified time, such controls must be included in the State's implementation plan, whether the plan is promulgated by the State or the Administrator. Nothing in the 1970 Amendments to the Clean Air Act suggests that the Administrator, in promulgating measures "for a State" under Section 110(c), is more restricted than the State would have been in submitting

[23] As a practical matter, the Administrator will rarely make choices inconsistent with those of the State. Instead, as he did in these cases, he will supplement and modify the state choice only as necessary to assure attainment of the ambient air quality standards. See note 7, *supra*.

a plan for approval under Section 110(a)." Instead, Section 110 treats identically measures adopted by a State and measures promulgated by the Administrator; whether a plan is wholly adopted by a State, wholly promulgated by the Administrator, or a mixture, it is the "applicable implementation plan" (Section 110(d)). Pet No. 75–1055, App. 20a–22a (*District of Columbia* v. *Train*); *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, 478 F. 2d 875, 888 (C.A. 1).

As the court in *South Terminal Corporation* v. *Environmental Protection Agency, supra*, 504 F. 2d at 668, determined:

> The statutory scheme would be unworkable were it read as giving to EPA, when promulgating an implementation plan for a state, less than those necessary measures allowed by Congress to a state to accomplish federal clean air goals. We do not adopt any such crippling interpretation.

Other courts agree that EPA may regulate the States in their role as polluters; as for example, when they own and operate conventional sources such as incinerators. See *Brown* v. *Environmental Protection Agency* (Pet. No. 75–909, App. 10a–11a); *District of Colum-*

[24] The Administrator's choices may be more restricted in one respect. Although a State may adopt more stringent measures than necessary to reach the ambient air quality standards (Section 116), the Administrator has no similar power to impose such measures on the States; he must prescribe the least burdensome means of achieving the ambient air quality standards. See also note 28, *infra*.

bia v. *Train* (Pet. No. 75–1055, App. 36a); *Commonwealth of Pennsylvania* v. *Environmental Protection Agency*, 500 F. 2d 246, 256–259 (C.A. 3); *Friends of the Earth* v. *Carey*, 535 F. 2d 165 (C.A. 2); *Friends of the Earth* v. *Environmental Protection Agency*, 499 F. 2d 1118, 1124 (C.A. 2); *Metropolitan Washington Coalition* v. *District of Columbia*, 511 F. 2d 809 (C.A.D.C.).

Because EPA may regulate States in their role as polluters, it may regulate the States in their role as the owners and operators of polluting transportation facilities. The Act itself requires state implementation plans to provide for "periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards" (Section 110(a)(2)(G)) and for other "transportation controls" (Section 110(a)(2)(B)) to the extent necessary for timely attainment of the ambient air quality standards.[25] As this language and its legislative history[26] demonstrate, Congress in-

[25] Moreover, as we discuss later (pp. 36-40, *infra*), Sections 113 and 304 clearly contemplate suits to compel States to conform their pollution-creating activities to applicable implementation plans, thus unmistakably indicating that Congress intended that these plans would control State activities, as well as those of private polluters.

[26] See, *e.g.*, S. Rep. No. 91-1196, 91st Cong., 2d Sess. 2, 12-14, 31 (1970). The Report states at p. 13:

> The Committee recognizes that during the next several years, the attainment of required ambient air quality in many of the metropolitan regions of this country will be impossible if the control of pollution from moving sources depends solely on emission controls. The Committee does not intend that these areas be exempt from meeting the standards. Some regions may have to establish new transportation programs and systems combined with traffic control regulations and restrictions in order to achieve ambient air quality standards for pollution agents associated with moving sources.

The House Report reflects the same understanding (H.R. Rep. No. 91-1146, 91st Cong., 2d Sess. 3-4 (1970)). The legislative history is reviewed in *Pennsylvania* v. *Environmental Protection Agency*, *supra*, 500 F. 2d at 258-259, and *District of Columbia* v. *Train*, Pet. No. 75-1055, App. 31a-33a. See also *Salmon*, *supra*, 2 Colum. Jour. of Env. Law at 308-324. Virtually every reference to how transportation control measures are to be implemented places the responsibility on the States. Thus, the legislative history cited by the court in *Brown* v. *Environmental Protection Agency*, Pet. No. 75-909, App. 19a-24a, concerning the mechanism for enforcing implementation plans generally, is largely irrelevant.

tended where necessary to require that States administer transportation control programs, particularly inspection and maintenance programs. The courts in *District of Columbia* v. *Train* (Pet. No. 75–1055, App. 30a–33a) and *Commonwealth of Pennsylvania* v. *Environmental Protection Agency*, *supra*, 500 F. 2d at 256–259, agree.[27]

Any possible doubt concerning the Administrator's authority to promulgate transportation control plans of the type involved here has been resolved by Congress itself. In legislation subsequent to the 1970 amendments, Congress has acted to bar promulgation of particular transportation control measures; but the general strategy of requiring States to implement such

[27] A number of States, including four of the respondents here, adopted and submitted such measures as part of their plans. See, *e.g.*, 38 Fed. Reg. 10119-10120 (April 24, 1973) (Arizona, Maryland, Virginia); 38 Fed. Reg. 11114 (May 4, 1973) (District of Columbia). See also note 7, *supra*.

measures, where necessary, was left unaltered.[28] This alone indicates that Congress approved that strategy. See *Zemel* v. *Rusk*, 381 U.S. 1, 11; *Federal Energy Administration* v. *Algonquin SNG, Inc.*, No. 75–382, decided June 17, 1976; *Canada Packers Ltd.* v. *Atchison T. & S. F. Ry. Co.*, 385 U.S. 183, 184. Cf. *Train* v. *Colorado Public Interest Research Group, Inc.*, No. 74–1270, decided June 1, 1976, slip op. 15–22.

There is also explicit legislative history to that effect. The House version of the Energy Supply and Environmental Coordination Act of 1974, 88 Stat. 246,

[28] In 1974, Congress amended the Act to preclude the Administrator from requiring "surcharges" on parking and to void previously promulgated requirements of that type. Section 110(c)(2)(B), as added by Section 4(b) of the Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, 88 Stat. 246, 42 U.S.C. (Supp. V) 1857c-5(c)(2)(B). In the same amendments, Congress authorized the Administrator to defer requirements for review of new parking facilities, with the understanding that such authority would in fact be exercised. See Sections 110(c)(2)(A), 110(c)(2)(C); H. R. Rep. No. 93-763, 93d Cong. 2d Sess. 88-90 (1974). Congress made clear, however, that the Administrator remained free to *approve* surcharge and parking review measures if States submitted them, thus showing its awareness of the difference between voluntary and compelled State action in this area. Sections 110(c)(2)(B), 110(c)(2)(C). Because Congress clearly focused on this difference in enacting the foregoing amendments, its refusal to preclude compelled state action on other transportation control measures is all the more significant. In subsequent legislation, Congress imposed various restrictions on the use of appropriated funds to administer or promulgate measures involving regulation of parking facilities, but again imposed no restrictions on such EPA measures as inspection and maintenance and bus lane requirements. See Section 510 of Pub. L. 93-563, 88 Stat. 1822, 1843; Section 407 of Pub. L. 94-116, 89 Stat. 581, 600; Section 406 of Pub. L. 94-378, 90 Stat. 1095, 1109.

257–258, contained a provision that would have prohibited the Administrator from requiring States and localities to create preferential bus and carpool lanes, unless such a measure was subsequently authorized by Congress, 119 Cong. Rec. 41300, 41305 (1973).[29] The conference committee deleted the provision and explained its action as follows (*e.g.*, S. Rep. No. 93–663, 93d Cong., 1st Sess. 88–90 (1973)):

> The other related provision of the House amendment has been modified to provide that only parking surcharges (rather than surcharges, management of parking supply, and bus/carpool lanes) must receive the explicit authorization of the Congress before they may legally be imposed by the Environmental Protection Agency. The conference substitute would therefore continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies * * *.

[29] The sponsor of this amendment, Mr. Moss, offered it to counteract, as he phrased it, the "order to provide carpool lanes or bus lanes" applicable to "California, * * * Texas and * * * some of the New England States." 119 Cong. Rec. 41300 (1973). Those "orders" were the transportation control plans, and the measures complained of are, in the case of California, among those at issue in this case.

* * * * *

> In adopting [restrictions involving parking surcharges and review of new parking facilities], the conferees do not intend to question either the need for, or the authority of the Administrator of the Environmental Protection Agency to impose, transportation control plans.

Congress' failure to enact an amendment that would have explicitly inhibited the Administrator from requiring States to create bus lanes supports the Administrator's authority under the Act to require bus lanes, and hence other transportation programs, to be implemented by the States. See *Train* v. *Colorado Public Interest Research Group, Inc.*, No. 74–1270, decided June 1, 1976 (slip op. 15–20); *Zemel* v. *Rusk*, 381 U.S. 1, 11.

C. SECTION 113 OF THE ACT AUTHORIZES THE ADMINISTRATOR TO ENFORCE IMPLEMENTATION PLAN REQUIREMENTS APPLICABLE TO THE STATE IN ITS ROLE AS POLLUTER.

The issue before this Court is the Administrator's authority to promulgate plans binding on the States, not the means available for enforcing such plans. Nevertheless, discussion of the enforcement sections of the Act (Sections 113 and 304) is appropriate, both because the court of appeals in No. 75–909 relied primarily on its reading of Section 113[30] in concluding that the Administrator lacked statutory authority to promulgate the regulations at issue, and because both sections, correctly interpreted, support the existence of that authority.

Section 113 provides for federal enforcement of an implementation plan when the State fails to enforce it.[31] It distinguishes carefully between violations of a

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[30] Section 113(a)(1) provides that whenever the Administrator finds that "any person is in violation of any requirement of an applicable implementation plan," he shall notify the person and the State involved of his finding. If the violation is not corrected within 30 days, the Administrator "may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action" in the appropriate district court (*ibid.*). In the civil action the court may issue a permanent or temporary injunction against any person who violates or fails or refuses to comply with an order or any requirement of an applicable implementation plan (Section 113(b)).

[31] Senator Muskie, in a "Summary of the Provisions of Conference Agreement on the Clean Air Amendments of 1970" which he provided to the Senate for its use in considering the bill as reported out of conference, emphasized the primary responsibility of the States when he described the procedures provided in Section 113 (116 Cong. Rec. 42385 (1970)):

> Federal enforcement under section 113 leaves the primary responsibility with the States for enforcing requirements under implementation plans. The Administrator can issue an abatement order to a polluter or go to court seeking an injunction only after 30 days' notice to an individual polluter [Section 113(a)(1)], or 30 days after notifying the State that the Federal Government is generally assuming enforcement powers in that State because of a widespread failure of States' enforcement [Section 113(a)(2)]. This gives States 30 days in which to take appropriate action themselves.

plan (Section 113(a)(1)), and the failure of a State to enforce a plan (Section 113(a)(2)). This dichotomy, we submit, recognizes the difference, upon which the Administrator relies, between the State as polluter and the State as regulator, and permits the Administrator to compel the State, like any other owner-operator of a pollution source, to comply with the requirements of an applicable implementation plan.[32]

The language of Section 113(a)(1) is clear:

> (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that *any person* is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section. [Emphasis added.]

[32] While Section 113(c) provides for criminal sanctions, the Administrator does not intend to seek criminal penalties against State officials. See BNA Environment Reporter, Current Developments, v. 5, no. 21, p. 755 (September 20, 1974). His first approach will be to obtain compliance with the provisions of applicable implementation plans by means of administrative orders pursuant to Section 113(a)(1), and administrative conferences pursuant to Section 113(a)(4). If these efforts should fail, the Administrator would then seek injunctive relief.

The term "person" includes a State (Section 302(e)), and an "applicable implementation plan" includes a substitute plan promulgated by the Administrator (Section 110(d)).

The court in *Brown* (Pet. No. 75–909, App. 17a) concluded that despite Section 302(e), the word "person" as used in Section 113(a)(1) does not include a State because both the person violating the Act and the State must be notified of a violation.[33] But the fact that Congress, in Section 113, required notification to the State in its role as regulator could hardly mean that Congress intended to exempt the State from Section 113 sanctions in its role as polluter. While the requirement of notice to the State as regulator may seem superfluous when it is also receiving notice as a polluter, it is reasonable to expect that a state regulatory agency, when notified of a violation by a state agency responsible for the operation of a pollution source, will take steps to bring the State into compliance. If both the State official responsible for the polluting activity (*e.g.*, the incinerator manager) and the agency responsible for pollution control (*e.g.*, the state environmental agency) are notified, both have an opportunity to bring about compliance before the Administrator must act.[34] Section 113(a)(1) thus simply recognizes, as

[33] Even under the *Brown* court's analysis, the "person" referred to in Section 113(a)(1) must sometimes be a State, since the court recognized that the Act "permits sanctions against a state that pollutes the air" (Pet. No. 75–909, App. 11a). The court evidently recognized the inconsistency in its analysis (*id.* at 16a).

[34] In practice, it may not be necessary to send separate notices, cf. *Friends of the Earth* v. *Carey*, 535 F. 2d 165, 174–176 (C.A. 2).

does the Administrator, that the State may act in two roles—either as the owner-operator of a pollution source, or as the enforcer of an implementation plan—and that it is subject to federal compulsion only in the former role.

This reading of Section 113(a) is confirmed by Section 304, which provides for citizen suits against "any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation * * *."[35] From the language used in clause (ii) it is clear that a State is a "person" who may be sued under Section 304; otherwise the reference to the Eleventh Amendment would be meaningless. It would be extraordinary for Congress to have permitted suits against States by citizens under Section 304, but failed to provide the same authority under Section 113 to the Administrator, who is responsible for implementing the Act.[36]

[35] The requirement that the State manage its roads in a way which will control air pollution is an "emission standard or limitation." See *Friends of the Earth* v. *Environmental Protection Agency*, *supra*, 499 F. 2d at 1123–1124.

[36] It is not significant that Section 304 refers expressly to a governmental entity, while Section 113 does not. Congress evidently wanted to preclude any claim that the Act lacked the necessary "clear evidence of congressional purpose" to permit citizen suits against a State. See Tribe, *Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies about Federalism*, 89 Harv. L. Rev. 682, 689–691 (1976). No such problem exists with regard to the federal actions contemplated by Section 113(a)(1). *Id.* at 685.

II.

A STATE MAY CONSTITUTIONALLY BE REQUIRED TO OPERATE ITS TRANSPORTATION SYSTEMS SO AS TO MINIMIZE THE POLLUTION THOSE SYSTEMS CAUSE.

In *National League of Cities* v. *Usery*, No. 74–878, decided June 24, 1976, the Court held that some state activities, although apparently within the reach of Congress' power under the Commerce Clause because of their effect on interstate commerce, are nevertheless immune from federal regulation that "displace[s] the States' freedom to structure integral operations in areas of traditional governmental functions * * *" (slip op. at 18).[37] Accordingly, the constitutionality of the Clean Air Act's direction that the States control the pollution they cause, directly or indirectly, depends not only on the traditional tests for determining whether activities are within the reach of Congress' power under the Commerce Clause, but also on the impact of the federal requirements on state sovereignty. We discuss first the effect of the state activities on interstate commerce rather than what is or is not an "integral governmental function" of a State (*National League of Cities* v. *Usery*, *supra*, slip op. at 21); to do otherwise would be to set "the Tenth Amendment on its head by requiring that State power, or at any rate a *part* of it, be defined prior to the definition of national power * * *." Corwin, *The Commerce Power versus States Rights* 125–126 (1936).

[37] However, such state activities might be subject to federal regulation under some other constitutional provisions. See *id.* at 18, n. 17; *Fitzpatrick* v. *Bitzer*, No. 75–251, decided June 28, 1976.

A. FEDERAL REGULATION OF THE CAUSES OF POLLUTION IS WITHIN THE POWERS OF CONGRESS UNDER THE COMMERCE CLAUSE.

The scope of the commerce power is broad enough to permit the federal government to control the causes of pollution. Pollution constitutes a burden on interstate commerce in a variety of ways. Congress found, as it stated in Section 101(a)(2) of the Act, that:

> the growth in the amount and complexity of air pollution * * * has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation.

The commerce power permits the Congress to act to protect against each of the dangers identified in the findings. It may protect the national economy against "inimical or destructive" forces, *North American Co.* v. *Securities & Exchange Commission*, 327 U.S. 686, 705; prevent interference with transportation, *Gibbons* v. *Ogden*, 9 Wheat. 1, 190–197; and promote the health and welfare of the Nation's citizens, *Cleveland* v. *United States*, 323 U.S. 329, 333. Moreover, there can be no doubt about Congress' power under the Commerce Clause to regulate activities that might be characterized as "local," such as the release of pollutants, when these have substantial interstate effects. *E.g.*, *Perez* v. *United States*, 402 U.S. 146; *Heart of Atlanta Motel,*

Inc. v. *United States*, 379 U.S. 241, 255; *Overstreet* v. *North Shore Corp.*, 318 U.S. 125.[38]

The existence of such effects here was amply demonstrated during consideration of the Clean Air Amendments of 1970.[39] Photochemical oxidants (smog) and hydrocarbons can cause physical ills such as temporary and permanent damage to lung functions, aggravation of asthma, and eye, nose, and throat irritation; they also cause damage to vegetation, clothing fabric, rubber and dyes.[40] Moreover, the effects are accelerat-

[38] The Commerce Clause is broad enough to permit federal controls over activities which indirectly affect interstate commerce. *Wickard* v. *Filburn*, 317 U.S. 111, 123–124; *Gibbons* v. *Ogden*, *supra*, 9 Wheat. at 195–196, 203–206. Thus, Congress may regulate indirect, as well as direct, pollution sources.

[39] See Hearings on S. 3229, S. 3466, and S. 3546 (Air Pollution—1970, Parts 1–5) before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, 91st Cong., 2d Sess. 345–346, 349–352, 474–475, 573, 1189, 1193, 1213, 1219, 1281, 1351, 1479, 1490, 1576–1577, 1596 and 1639–1650 (1970); S. Rep. No. 91–1196, 91st Cong., 2d Sess. 1 (1970); H. R. Rep. No. 91–1146, 91st Cong., 2d Sess. 7 (1970); 116 Cong. Rec. 19204–19205 (1970) (Cong. Staggers); 116 Cong. Rec. 19208–19209 (1970) (Cong. Jarman); 116 Cong. Rec. 19209–19210 (1970) (Cong. Rogers); 116 Cong. Rec. 19216 (1970) (Cong. Keith); 116 Cong. Rec. 32920–32922 (1970) (Sen. Baker); 116 Cong. Rec. 32919–32920 (1970) (Sen. Spong); 116 Cong. Rec. 33091–33093 (1970) (Sen. Murphy); 116 Cong. Rec. 33115–33117 (1970) (Sen. Cooper).

[40] Department of Health, Education, and Welfare, No. AP–63, *Air Quality Criteria for Photochemical Oxidants*, 10–3 to 10–13 (March, 1970). In 1974, a study performed by the National Academy of Sciences estimated that air pollution causes on the order of fifteen thousand deaths, fifteen million days of restricted activity, and seven million days spent in bed each year in the United States and that as many as four thousand deaths and four million days of illness each year may be attributed to automobile emissions alone. Committee Print, Serial

ing. In 1963, the estimated annual costs of health problems related to air pollution exceeded two billion dollars;[41] by 1968 they were more than six billion dollars,[42] and by 1975 they were more than ten billion dollars.[43] In 1975, the total cost of air pollution, including damage to buildings and vegetation, was estimated to be more than twenty-six billion dollars.[44]

The futility of leaving control of air pollution exclusively to the States is clear. As this Court has noted, the 1970 Clean Air Amendments responded to the failure of the States to cope with the mounting problems, despite offers of federal technical and financial assistance. *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 64. Cars frequently travel across state lines, and smog and other pollutants drift hundreds of miles from the city of origin; no one State or locality

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No. 93–24, Senate Committee on Public Works, Air Quality and Automobile Emission Control, Report by the Coordinating Committee on Air Quality Studies, National Academy of Sciences, National Academy of Engineering, 93d Cong., 2d Sess., pp. 11–13 (1974) (hereafter "NAS report"). The same study estimated that particularly susceptible groups in the population constitute about forty million people, or about one fifth of the total population. *Id.* at 7–8.

[41] Barrett and Waddell, *Cost of Air Pollution Damage: A Status Report*, Environmental Protection Agency 11 (February, 1973).

[42] *Id.* at 59.

[43] Leung and Klein, *The Environmental Control Industry, An Analysis of Conditions and Prospects for the Pollution Control Equipment Industry* 24 (December, 1975).

[44] *Ibid.*

can solve the problem affecting its citizens.[45] In these circumstances, Congress rationally concluded that the lack of effective controls will unduly burden interstate commerce, and that this burden should be removed by the establishment of an effective national program.

In light of the foregoing considerations, the courts have upheld Congress' authority to regulate activities causing air pollution. *South Terminal Corporation* v. *Environmental Protection Agency, supra*, 504 F. 2d at 677; *Pennsylvania* v. *Environmental Protection Agency, supra*, 500 F. 2d at 259; *District of Columbia* v. *Train*, Pet. No. 75–1055, App. 33a.

B. THE SEPARATE AND INDEPENDENT EXISTENCE OF THE STATES IS NOT HERE THREATENED.

While the Commerce Clause, together with the Necessary and Proper Clause, serves as a solid basis for the regulations at issue, under *National League of Cities* v. *Usery, supra*, the effect of the federal regulations on the functioning of the States as sovereign entities must also be assessed. Only if the federal intrusion threatens the separate and independent existence of the States and their ability to function effectively in a federal system is the federal regulation

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[45] *E.g.*, 41 Fed. Reg. 28635 (July 12, 1976). See also State Air Pollution Implementation Plan Progress Report, July 1 to December 31, 1975, Environmental Protection Agency, pp. 46–47 (April, 1976); H.R. Rep. No. 94–1175, 94th Cong., 2d Sess. 113 (1976).

unconstitutional despite the basis for Congress' action in the Commerce Clause (slip op. at 11, 17, 21).[46]

This is a stringent test and the Court intended it to be such. Ours is not simply a federal system. It is a democratic system. The judiciary has never been the only—or even the primary—safeguard against regulation under the Commerce Clause[47] which, although enacted by the elected representatives in Congress, might have seemed to others excessive or unduly intrusive.[48]

In *National League of Cities*, "the substantial costs imposed upon the States" and Congress' "displacement of state decisions" regarding how state and local gov-

[46] The States' inherent sovereignty is also protected by the limitations on the reach of the Commerce Clause: "[t]he subject of federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several States." *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U.S. 453, 466. But this case does not involve federal legislation affecting an important state function and having only an attenuated connection to matters within the federal commerce power. Moreover, there is in this case a clear expression of congressional intent to control state-caused pollution. Compare *United States* v. *Bass*, 404 U.S. 336, 349.

[47] Chief Justice Marshall noted the primary safeguards over the exercise of the commerce power in *Gibbons* v. *Ogden*, 9 Wheat. 1, 197: "The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments."

[48] Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 Colum. L. Rev. 543, 558–559 (1954); Tribe, *supra* n. 36, at 694–695.

ernments traditionally "have arranged their affairs" represented, in the Court's view, a threat to state sovereignty sufficient to render the 1974 Fair Labor Standards Act Amendments unconstitutional (slip op. 13, 15). Neither factor is present in this case and the regulations at issue represent no such threat.

If upheld, the federal legislation involved in *National League of Cities* would, the Court stated, "significantly alter or displace the States' abilities to structure employer-employee relationships in such areas as fire prevention, police protection, sanitation, public health, and parks and recreation. These activities are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide, services such as these which the States have traditionally afforded their citizens" (slip op. at 17; footnote omitted).

In this case, however, the regulations at issue do not affect the full range of fundamental state activities; instead, they require only that the State operate its highways consistently with federal standards.[49] Rather than affecting almost all state employees and thereby reaching substantially all state activities, as the wage and hour laws did in *National League of Cities* (slip op. 2, 4, 13–14), the regulations here are

[49] Cf. *United States* v. *California*, 297 U.S. 175, holding that a state's operation of a railroad must be consistent with federal standards based on the Commerce Clause. The Court in *National League of Cities* (slip op. at 20, n. 18) specifically approved the holding in *United States* v. *California*, *supra*.

narrowly drawn to affect only that small part of the State's transportation policy which specifically creates the pollution problem. Moreover, the degree of federal intrusion is minimized because state policy is modified only to the extent necessary to attack the problem: the States are not to permit the operation on their highways of non-conforming vehicles, and are to encourage the use of buses in narrowly circumscribed ways.[50]

Federal intrusion is also minimized because the State is first given the opportunity to specify the methods by which it will attain the federal air quality standards; federal requirements are imposed only if the methods specified by the State will not achieve the federal standards. In fact, the federal requirements generally reflect the State's choice of the methods it prefers for attaining the ambient air quality standards;[51] the Administrator's regulations are then designed primarily to assure that the State's policy choices will in fact be carried out. Even after the Administrator has promulgated a substitute pollution control plan for the State, the State remains free to revise the plan if it prefers to use a different pollution control strategy to meet the national air quality standards.

[50] Moreover, the federal requirements apply only in those particular areas within the States where the air pollution problems are most serious.

[51] In developing substitute transportation plans, the Administrator considered "the severity of the pollution problem, the availability of control measures, the existing local control activities and conditions, the State transportation plans, the public hearing comments, the disruptive impact of certain measures, and the pollutant controlled.* * * If the States have submitted plans that are in part approvable, the Administrator has attempted to promulgate measures that supplement the approved portions [of] the measures included in the plan the State is expected to submit. The Administrator has also made many changes based upon constructive public hearing testimony on the proposed plans." 38 Fed. Reg. 30628 (November 6, 1973). See note 7, *supra*.

Thus, the means by which the federal standards are met remains within the control of the States—the federal government supplies the standards but it specifies the means only when the State declines to do so. It is anomalous to conclude, as did the courts below (Pet. No. 75–909, App. 30a–32a; Pet. No. 75–1055, App. 44a n. 26. Cf. Pet. No. 75–960, App. 30a–32a), that respect for state sovereignty forbids this carefully limited intrusion into state control over the operation of its highways, and permits instead only the substantially greater intrusion that would be involved if the federal government were itself to inspect and police all private vehicles using state highways, operate buses, and itself mark bus lanes.

Furthermore, in terms of increased costs, the pollution control requirements at issue here, unlike the wage and hour laws involved in *National League of Cities* (slip op. at 12), will not have a significant financial impact on the States. These requirements will therefore not force the States to reconsider the allocation of their resources, generally restructure the means by which they arrange their affairs, or curtail the services they provide their citizens.

None of the required programs need be expensive. A State may simply add the inspection for compliance with emission control standards to its existing periodic

automobile inspection program,[52] or it may contract with a private company to conduct the inspections, as Arizona has done (Ariz. Rev. Stat., Section 36–1775A (1974)).[53] In either case, fees may be charged the automobile owners. Indeed, in States that have a fee system, the inspection programs have generally returned a net profit. See *Status of Safety and Emissions Inspection in the Fifty States* (February 1976), Automotive Parts & Accessories Association.[54] The establishment of exclusive bus lanes is not expensive if existing lanes are set aside for bus use, as has been done in the downtown streets of Washington, D.C., by simply painting sym-

[52] As of February 1976, ten States in which the applicable implementation plans require inspection and maintenance programs had ongoing periodic passenger vehicle safety inspection programs; five such States had limited programs (*e.g.*, spot checks, inspections on vehicle transfers) and two had no such programs. See *Status of Safety and Emissions Inspection in the Fifty States* (February, 1976), Automotive Parts & Accessories Association.

[53] At least eight other inspection and maintenance programs are currently in operation. Shutler, *Overview of Inspection/Maintenance (I/M)*, Proceedings of the Fourth North American Motor Vehicle Emission Control Conference 102–104 (November 5–7, 1975).

[54] Section 105 (42 U.S.C. 1857c) provides grants for planning, developing, establishing, and maintaining programs for the prevention and control of air pollution. This provision refutes the assertion of petitioners in No. 75–1050, that the federal government has attempted to impose on the States the entire financial burden of controlling pollution. Instead, federal assistance to the States' efforts to control pollution has been steadily increasing, *Train* v. *Natural Resources Defense Council, Inc.*, *supra*, 421 U.S. at 63–64. In fiscal year 1975, state air pollution control agencies received more than 52 million dollars in federal support. *Progress in the Prevention and Control of Air Pollution in 1975*, Annual Report of the Administrator of the Environmental Protection Agency to the Congress of the United States, 139 (1975).

bols and erecting signs.[55] And state investment in additional buses is insignificant in relation to the kind of financial impact considered in *National League of Cities*.[56]

Thus, the costs to the States of limiting the pollution resulting from the use of state highways is not remotely comparable to the costs of complying with the wage and hour provisions involved in *National League of Cities*, and will not limit state choices concerning the proper allocation of resources in the way this Court found objectionable in that case. Indeed, if the estimates of the savings to be anticipated from achieving the primary air quality standards are credited,[57] compliance with the federal requirements may lead to savings in state expenditures for health, welfare and care of property that would more than offset the costs of the emission control programs.

If the regulations involved in this case need any further justification, it is supplied by the fact that "[t]he enactment at issue * * * was occasioned by an extremely serious problem which endangered the well-being of all

[55] None of the regulations at issue requires construction of bus lanes, but if that were necessary, federal aid is authorized, 23 U.S.C. (Supp. V) 142(a)(1); Pub. L. 93–643, 88 Stat. 2281, Section 120.

[56] Here again, substantial federal assistance is available. The Urban Mass Transportation Act of 1964, 78 Stat. 302, as amended, 49 U.S.C. 1601 *et seq.*, 49 U.S.C. (Supp. V) 1603(a), provides for federal grants of up to 80 per cent of the costs of public buses; see also 23 U.S.C. (Supp. V) 142(a)(2).

[57] The National Academy of Sciences has concluded that, taking total costs into account, the Nation could save from 2.5 to 10 billion dollars annually if automobile emissions were reduced so that the primary ambient air quality standards were achieved. NAS report, *supra* n. 40, at pp. 15, 121; see also H.R. Rep. No. 94–1175, 94th Cong., 2d Sess. 208 (1976).

the component parts of our federal system and which only collective action by the National Government might forestall." The quoted statement from *National League of Cities* (slip op. at 18) explained in part why the Court believed *Fry* v. *United States*, 421 U.S. 542, was correctly decided.[58] *Fry* upheld a wage freeze pursuant to the Economic Stabilization Act of 1970 as applied to state employees. The threat to the Nation from air pollution poses an emergency quite as serious as the threat of inflation, *Union Electric Co.* v. *Environmental Protection Agency*, No. 74–1542, decided June 25, 1976, slip op. 9, 8–17, and one quite as intractable in the absence of federal action, see *Train* v. *Natural Resources Defense Council, Inc.*, *supra*, 421 U.S. at 63–64.[59] Furthermore, municipal incinerators are

[58] The Court also pointed out that *Fry* dealt with a temporary enactment (slip op. 19). The controls involved here may also be temporary. The period for which transportation controls will be necessary will vary with the seriousness of the problem in a particular area. In some areas, they may be required only until the air quality standards are attained; in others, they may be necessary for longer periods to maintain air quality. And, of course, a State may be able to shorten the period in which controls are in effect by revising the plan in order to achieve the required air purity more quickly.

[59] The national ambient air quality standard for photochemical oxidants has been exceeded in Los Angeles on two to three hundred days per year, sometimes by a factor of seven, based on data from a monitoring network that probably gave conservative results. NAS report, *supra* n. 40, at 48. And frequent violations of the ambient standards are not confined to Los Angeles, or even to large cities; a study of small towns in Maryland, Ohio, and Pennsylvania showed that ambient air quality standards have been exceeded about fifty percent of the time. State Air Pollution Implementation Plan Progress Report, July 1 to December 31, 1975, Environmental Protection Agency 47 (April, 1976).

major sources of particulate matter. Municipal power plants emit substantial amounts of sulfur dioxide. And smog pollution arises primarily from public streets and highways due to the operation of automobiles. Accordingly, the compliance of state facilities is absolutely essential to achieve the statutory purpose of protecting the public health by a date certain.

All that remains is the objection, not specifically mentioned in *National League of Cities*, that the federal rules require affirmative state action.[60] This is not a valid constitutional objection. As the Court held in *Testa* v. *Katt*, 330 U.S. 386, 391: "[T]he Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people. * * * [T]he obligation of states to enforce these federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide." Indeed, the form used here—federal regulations to be promulgated only after state default—represents less of an intrusion on state sovereignty than the traditional forms of preemption (see, *e.g.*, the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381 *et seq.*, 15 U.S.C. 1392(d); *Chrysler Corp.* v. *Tofany*, 419 F. 2d 499 (C.A. 2), or grants-in-aid (see, *e.g.*, the Federal Aid Highways Act, 23 U.S.C. 101 *et seq.*, 23 U.S.C. (Supp. V) 154 (88 Stat. 2286)). See *Pennsylvania* v. *Environmental Protection Agency*, *supra*, 500 F. 2d at 262–263.[61]

[60] Pet. No. 75–1055, App. 43a–44a; Pet. No. 75–909, App. 27a–32a.

[61] It is clear that federal regulations under the Commerce Clause can preempt traditional state functions. See, *e.g.*, *Sanitary District of Chicago* v. *United States*, 266 U.S. 405 (sewage

The activity required of the States is, in any event, minimal. A State must take three steps to comply with the federal regulations requiring an inspection and maintenance program.[62] First, although the federal regulations establish the standards that must be met and the procedures to be followed (see, *e.g.*, Pet. No. 1055, App. 62a–65a), the State must set up the program —either by contracting for its implementation by a private organization, or by delegating the responsibility to a state agency, and deciding such matters as the location of inspection stations, their hours of operation, and personnel rules.[63] Often, existing state laws will provide adequate authority for these state actions. If not, the Clean Air Act and the EPA regulations thereunder provide the authority. Nothing in the regulations requires a State to enact legislation.[64] Second,

disposal); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, and *Katzenbach* v. *McClung*, 379 U.S. 294 (regulation of motel and restaurant operations); *Lodge 76, International Association of Machinists* v. *Wisconsin Employment Relations Commission*, No. 75–185, decided June 25, 1976 (regulation of labor-management relations); *City of Burbank* v. *Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638 (control of airport noise).

[62] The steps required for implementation of the other measures would be similar but simpler; for instance, establishment of the exclusive bus lanes merely requires providing adequate markings, and then enforcing the restrictions in the same way as any other traffic controls.

[63] The State may be required to expend funds, as it frequently will when complying with federal requirements imposed pursuant to the Commerce Clause; *United States* v. *California*, *supra*; pp. 49–51, *supra*.

[64] Accordingly, no sanctions could be imposed on a State for its failure to legislate, and the Fourth Circuit's analysis (Pet. No. 75–960, App. 29a–32a) is largely irrelevant.

the State must deny registration to vehicles that fail the inspection, as they now deny registration to vehicles that fail state safety inspections (see note 52, *supra*). See, *e.g.*, Pet. No. 75–1055, App. 40a–41a. Finally, the operation of any vehicle after registration has been denied because of such non-compliance would be penalized under the applicable state registration law, see, *e.g.*, D.C. Code, Title 40, ch. 2, Sections 205 and 206 (1973 ed.).

In sum, the absence of any broad interference with state policies; the lack of any substantial impact on state budgets; the need to achieve the essential national goal of reducing air pollution; the fact that this can be done only through national action; the carefully limited intrusion into an area (pollution control) that had been left to the States; and the great deference shown to the State's choice of the methods for achieving air quality, with the EPA Administrator imposing a plan only if the State defaults—all these factors distinguish *National League of Cities* and demonstrate that the federal regulations in issue not only are valid under the Commerce Clause, but also represent national action in the great tradition of that constitutional provision.

It is no answer to say that because the States have exercised control over the use of their highways[65] they have the exclusive authority to determine whether and to what extent the resulting air pollution should be con-

[65] When the Constitution was adopted, private ownership and management of turnpikes was widespread, and local governments generally felt unequal to the task of providing public highways. Evans, *Private Turnpikes and Bridges*, 50 American Law Review 527 (1916). Cf. *Hendrick* v. *Maryland*, 235 U.S. 610.

trolled. Even if control of the highways is an "integral governmental function," control of air pollution is not. States have exercised authority over waste disposal but a State is not thereby immunized from compliance with federal air pollution controls applicable to a municipal incinerator; nor is it immunized if the incinerator is operated by a private contractor. In any event, whether a particular function is reserved exclusively to the States cannot be decided merely on the basis of how one characterizes the particular function in terms of state sovereignty. That would ignore the power of Congress to legislate in the national interest under the Commerce Clause in order to meet national problems that pay no heed to state boundaries.

We thus agree with Mr. Justice Blackmun, concurring in *National League of Cities*, that the Court's opinion in that case "does not outlaw federal power in areas such as environmental protection, where the federal interest is demonstrably greater and where state facility compliance with imposed federal standards would be essential."

III.

THE COMMONWEALTH OF VIRGINIA IS NOT REQUIRED TO BREACH THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT.

The Commonwealth of Virginia contends that EPA is requiring it to purchase buses in contravention of its duties under the Washington Metropolitan Area Transit Authority Compact, Pub. L. 89–774, 80 Stat. 1324, establishing the Washington Metropolitan Area Transit Authority (WMATA). But the Commonwealth misreads the applicable regulation and the opinion of the court below.

The regulation at issue, 40 C.F.R. 52.2435(e),[66] requires the Commonwealth and WMATA to certify to EPA that the Commonwealth or its local governments have made commitments pursuant to the terms of the Compact that are adequate, together with the commitments of the other participants in the Compact, to fund the necessary purchases. The regulation does not require the Commonwealth by itself to purchase the buses. The court below did not rewrite 40 C.F.R. 52.2435 to impose solely upon the Commonwealth the obligation to pur-

[66] 40 C.F.R. 52.2435(e) provides:

(e) With respect to the measure for increased bus fleet and service approved in § 52.2423. The Commonwealth of Virginia shall no later than January 31, 1974, submit a compliance schedule to put the program in effect. The compliance schedule shall, at a minimum, provide that the Commonwealth of Virginia shall, on or before March 1, 1974, submit to the Administrator a statement, signed both by a representative of the Commonwealth of Virginia and by a representative of the Washington Metropolitan Area Transit Authority (WMATA) indicating that, in the judgment of both of them, financial commitments have been made by the Commonwealth of Virginia or by its local governments for the purchase of buses. This statement, when taken in conjunction with the commitments made by the District of Columbia and the State of Maryland, must be sufficient to enable WMATA to purchase in the fiscal year beginning the next July 1 the number of buses indicated below:

Fiscal Year 1975—175 buses
Fiscal Year 1976—150 buses
Fiscal Year 1977—150 buses

The statement shall also indicate that WMATA has in fact committed to purchase that number of buses.

chase the necessary buses. The court merely upheld the regulation (Pet. No. 1055, App. 57a), specifically noting that it required the submission of assurances that Virginia and Maryland "or their local governments," together with the District of Columbia, have made the necessary financial commitments (*ibid.*)

The Commonwealth's current disavowal of any financial responsibility for WMATA projects (Pet. No. 75–1050, p. 12) is inconsistent with the transportation plan it submitted to EPA. That plan, like those of Maryland and the District of Columbia, contemplated the purchase of new buses as a part of a program to improve mass transit facilities. *E.g.*, 38 Fed. Reg. 33706 (December 6, 1973). The regulation to which the Commonwealth objects, therefore, does not in this respect impose any duties on the Commonwealth other than those the Commonwealth itself indicated it could perform.[67]

Finally, we submit that it is misleading to focus on the Commonwealth's responsibility for bus service in the affected area. The Commonwealth concedes that it owns and maintains its highways (Pet. No. 75–1050, p. 10). The focus should be on its responsibility to take action to reduce the air pollution that results from the motor vehicle traffic thus facilitated and encouraged.

[67] The Commonwealth's original understanding of its powers seems clearly correct. The Commonwealth participates in WMATA through the Northern Virginia Transportation District, which is authorized by Section 18 of the Compact, 80 Stat. 1332, to make commitments for the acquisition of transit facilities. The District's enabling legislation (Code of Va., Title 15.1, Ch. 32. § 15.1–1358(e); Ch. 631, Va. Acts of Assembly, 1964) permits it to accept state grants for such purposes.

Providing additional buses (or sharing in the cost of their acquisition) is simply one measure by which this kind of air pollution can be reduced. The Commonwealth's responsibility to take such actions flows from its ownership of the highways and is not diminished by the particular arrangements it has made for provision of bus service.

CONCLUSION

For the foregoing reasons, the judgments of the courts of appeals for the ninth and fourth circuits should be reversed, and the judgment of the court of appeals for the District of Columbia circuit should be reversed insofar as it prohibits the Administrator from requiring a State to implement necessary transportation control measures, and affirmed in all other respects.

Respectfully submitted.

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SEPTEMBER 1976.

APPENDIX

Constitutional Provisions and Statutes Involved:

I. The Constitution of the United States provides in pertinent part:

Article I, Section 8:

> The Congress shall have Power * * *
>
> * * * * *
>
> To regulate Commerce * * * among the several States * * *
>
> * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article VI:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land * * *.

Tenth Amendment:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

II. Sections 101, 107, 109, 110, 113 and 302 of the Clean Air Act of 1967, 81 Stat. 485, as amended by the Clean Air Amendments of 1970, 84 Stat. 1676, 42 U.S.C. 1857 *et seq.*, as amended by Section 302, 85 Stat. 464 and

Sections 4 and 6 of the Energy Supply and Environmental Coordination Act of 1974, Pub. L. No. 93–319, 88 Stat. 256 (42 U.S.C. (Supp. V)), provide in relevant part:

Section 101 (42 U.S.C. 1857)

FINDINGS AND PURPOSES

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States:

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional and local programs to prevent and control air pollution.

(b) The purposes of this title are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health

and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

Section 107 (42 U.S.C. 1857c–2)

AIR QUALITY CONTROL REGIONS

(a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

* * * * *

Section 109 (42 U.S.C. 1857c–4)

NATIONAL AMBIENT AIR QUALITY STANDARDS

(a)(1) The Administrator—

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary

ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b)(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based

on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

Section 110 (42 U.S.C. (and Supp. V) 1857c–5)

IMPLEMENTATION PLANS

(a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under

paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to

insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially

inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans [*sic*] and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate

authority to prevent the construction or modification of any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

(c)(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed.

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required

pursuant to a provision of its plan referred to in subsection (a)(2)(H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State.

(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) which the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date.

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 307(a) (relating to subpoenas) shall be applicable to any proceeding under this subsection.

Section 113 (42 U.S.C. (and Supp. V) 1857c–8)

FEDERAL ENFORCEMENT

(a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any per-

son is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of Federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections,

etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

(3) violates section 111(e), 112(c), or 119(g); or

(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c)(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

(C) violates section 111(e), section 112(c), or section 119(g)

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed

or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

Section 302 (42 U.S.C. 1857h)

DEFINITIONS

When used in this Act—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

* * * * *

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

* * * * *

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-909, 75-960, 75-1050 and 75-1055

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ENVIRONMENTAL PROTECTION AGENCY, *Petitioner,*

v.

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STATE AIR POLLUTION CONTROL BOARD, *Petitioner,*

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RUSSELL E. TRAIN, ADMINISTRATOR,
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DISTRICT OF COLUMBIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

BRIEF FOR THE STATES

STATE OF ARIZONA
STATE OF CALIFORNIA
STATE OF MARYLAND
COMMONWEALTH OF VIRGINIA
DISTRICT OF COLUMBIA

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COMMONWEALTH OF VIRGINIA
DISTRICT OF COLUMBIA

OPINIONS BELOW

The States adopt the summary of the Opinions Below which appears in the Brief for the Federal Parties.

JURISDICTION

The States adopt the statement of Jurisdiction which appears in the Brief for the Federal Parties. For purposes of clarification, the States note that a separate petition for a writ of certiorari to the Court of Appeals for the District of Columbia was filed by the State Air Pollution Control Board of the Commonwealth of Virginia. That petition was granted on June 1, 1976, the same day upon which the Court granted the petitions of the Administrator of the Environmental Protection Agency (A. 980-981).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Administrator of the Environmental Protection Agency has omitted, contrary to Rule 40(c) of this Court, the following regulations which are involved in this case.

(1) 40 C.F.R. §52.132 (A. 573-77).
Vehicle emission inspection and maintenance regulations for Phoenix-Tucson Air Quality Control Region ("AQCR").

(2) 40 C.F.R. §52.242 (A. 503-05).
Vehicle emission inspection and maintenance regulations for the five California AQCR's.

(3) 40 C.F.R. §52.490 (A. 637-38).
Vehicle emission inspection and maintenance regulations for the District of Columbia portion of the National Capital Interstate AQCR.

(4) 40 C.F.R. §52.1089 (A. 668-71).
Vehicle emission inspection and maintenance regulations for the Maryland portion of the National Capital Interstate AQCR.

(5) 40 C.F.R. §52.2441 (A. 699-702).
Vehicle emission inspection and maintenance regulations for the Virginia portion of the National Capital Interstate AQCR.

(6) 40 C.F.R. §52.1095 (A. 753-55).
Vehicle emission inspection and maintenance regulations for the Metropolitan Baltimore Intrastate AQCR. This regulation, which is typical of the Administrator's vehicle emission inspection and maintenance regulations at issue in this case is also set forth for convenience in Appendix A *infra*.

(7) 40 C.F.R. §52.476(g) and (h) (A. 624-26).
Increased bus fleet and exclusive bus lane regulations for the District of Columbia portion of the National Capital Interstate AQCR.

(8) 40 C.F.R. §52.1080(g) and (h) (A. 658-59).
Increased bus fleet and exclusive bus lane regulations for the Maryland portion of the National Capital Interstate AQCR.

(9) 40 C.F.R. §52.2435(e) and (f) (A. 690-91).
Increased bus fleet and exclusive bus lane regulations for the Virginia portion of the National Capital Interstate AQCR.

(10) 40 C.F.R. §52.23 *Violation and Enforcement*, set forth at p. 31 *infra*.

QUESTIONS PRESENTED

1. Whether the Administrator of the Environmental Protection Agency has the power under the Clean Air Act to require a state to enact laws and regulations establishing air pollution control programs and to administer and enforce those programs.

2. Whether the Clean Air Act empowers the Administrator of the Environmental Protection Agency to seek sanctions against a state and its officials for failure to enact, administer and enforce air pollution control programs promulgated by the Administrator.

3. Whether, if the Administrator has such statutory authority, the Clean Air Act is a valid exercise of Congress' power under the Commerce Clause and whether it violates state sovereignty and principles of federalism inherent in the Constitution of the United States.

4. Whether the Commonwealth of Virginia, the State of Maryland and the District of Columbia can be compelled to provide funds to the Washington Metropolitan Area Transit Authority for the purchase of buses.

STATEMENT OF THE CASE

The following Statement of the Case is presented for purposes of emphasis, conciseness and clarity.

The Clean Air Act

In 1970 Congress extensively amended the Clean Air Act.[1] Those amendments require the Administrator of the Environmental Protection Agency to establish air quality criteria[2] and to set primary and secondary

[1] Clean Air Amendments of 1970, 84 Stat. 1676 (amending 42 U.S.C. 1857 *et seq.)*. The statutory history of the Clean Air Act and the 1970 Amendments is discussed in Argument II A at pp. 27-28 *infra*. The Clean Air Act was further amended by Section 302, 85 Stat. 464, and by the Engergy Supply and Environmental Coordination Act of 1974, 88 Stat. 246. For convenience, further references to the "Clean Air Act" will mean the Clean Air Act as amended to date.

[2] 42 U.S.C. 1857c-3(a); Clean Air Act §108(a).

ambient air quality standards[3] for air pollutants. To date, the Administrator has issued air quality criteria and primary and secondary air quality standards for sulfur oxides, particulate matter, nitrogen oxides, carbon monoxide, hydrocarbons, and photochemical oxidants. The principal source of carbon dioxide, hydrocarbons, photochemical oxidants and nitrogen oxides as pollutants in the ambient air is motor vehicle emissions.

The Clean Air Act further requires each state[4] to devise and submit to the Administrator for approval a plan for the implementation, maintenance and enforcement of the primary and secondary air quality standards in each air quality control region (AQCR) within the state.[5] Each state implementation plan must contain certain provisions, including:

> (B) . . . Emission limitations, schedules, and time-tables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls; . . .
>
> (F) . . . necessary assurances that the State will have adequate personnel, funding and authority to carry out such implementation plan . . . [and]

[3] 42 U.S.C. 1857c-4; Clean Air Act §109. Primary standards are standards necessary to protect the public health. Secondary standards are those required to protect the public welfare from known or anticipated adverse effects.

[4] The District of Columbia is treated as a state under the Clean Air Act. 42 U.S.C. 1857h(d); Clean Air Act §302(d). *See* Argument II E at pp. 52-55 *infra*.

[5] The implementation plans were required to be submitted within nine months after April 30, 1971, the date the Administrator promulgated the ambient air quality standards. 42 U.S.C. 1857c-5(a)(1). Clean Air Act §110(a)(1).

(G) . . . [provision] to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards.[6]

To be approved by the Administrator, state implementation plans must provide for the attainment of the primary air quality standards within three years and the secondary air quality standards within a specified reasonable period of time.[7] If a state fails to propose an implementation plan or if the plan it proposes is not acceptable to the Administrator under the criteria set forth in the Clean Air Act, the Act requires the Administrator to promulgate a substitute plan which will achieve timely attainment of the national primary and secondary air quality standards within the state.[8]

All of the states that are parties to this case (the "States") submitted implementation plans to the Administrator in early 1972. However, during the period of initial implementation of the 1970 Amendments to the Clean Air Act, the Administrator recognized that the states ". . . had practically no experience with transportation control measures as a means of dealing with air quality problems and that available data were not sufficient to permit states to develop meaningful transportation control schemes and predict their impact on air quality."[9] Accordingly, the Administrator advised the States that transportation control schemes could be deferred beyond the statutory deadline for the submission of implementation plans, so long as the plans submitted defined the degree of

[6] 42 U.S.C. 1857c-5(a)(2)(B), (F) and (G); Clean Air Act §110(a)(2)(B), (F) and (G).

[7] 42 U.S.C. 1857c-5(a)(2)(A); Clean Air Act §110(a)(2)(A).

[8] 42 U.S.C. 1857c-5(c)(1); Clean Air Act §110(c)(1).

[9] *See, e.g.*, 37 Fed. Reg. 10844 (May 31, 1972).

emission reduction which could be achieved by the transportation control measures being considered.[10]

However, the United States Court of Appeals for the District of Columbia ruled on January 31, 1973 that the Clean Air Act did not permit either the delay in submission of transportation control plans or an extension of time within which to meet the primary ambient air quality standards.[11] The court's order directed the Administrator to rescind his extensions and to require the States to submit transportation control plans by April 15, 1973 and to attain the primary ambient air quality standards by May 31, 1975. The Administrator was expressly forbidden to grant any extension of the deadline for attaining the primary air quality standards unless a state had made every effort to achieve the standards, including the implementation of all "reasonably available alternative means."[12] Accordingly, the Administrator revoked all extensions previously granted and ordered each state which had deferred submission of land-use and transportation control strategies to submit the required plans by April 15, 1973.[13]

The Transportation Control Plans

Officials of Arizona, Maryland, Virginia and the District of Columbia submitted, within the time prescribed, transportation control plans for the air quality control regions within their respective jurisdictions. The plans for the following air quality control regions in those States are involved in this case: the Phoenix-Tucson Intrastate AQCR, the Metropolitan

[10] 36 Fed. Reg. 15486 (August 14, 1971).

[11] *Natural Resources Defense Council v. Environmental Protection Agency*, 475 F.2d 968 (D.C. Cir. 1973).

[12] 42 U.S.C. 1857c-5(e)(1)(B); Clean Air Act Section 110(e)(1)(B).

[13] 38 Fed. Reg. 7323-24 (March 20, 1973).

Baltimore Intrastate AQCR (Baltimore City and the five surrounding counties), and the National Capital Interstate AQCR (the District of Columbia and the Maryland and Virginia suburbs). California was not able to prepare a transportation control plan for its five intrastate AQCR's within the limited time available.

Each of the State-submitted plans proposed a wide range of strategies to reduce air pollution caused by motor vehicle emissions, including a mandatory annual emission inspection and maintenance program for various classes of vehicles. The Maryland, Virginia, and District of Columbia plans also proposed measures to encourage the use of public transportation in the Washington D.C. region by creating disincentives to private vehicle use, by adding more buses to the Washington Metropolitan Area Transit Authority's (WMATA)[14] fleet, and by establishing exclusive reversible bus lanes in specified highway corridors.[15]

The Administrator approved some parts and disapproved other parts of Arizona's plan for the Phoenix-Tucson AQCR, Maryland's plan for the Metropolitan Baltimore Intrastate AQCR, and Maryland's, Virginia's, and the District of Columbia's plans for their respective portions of the National Capital Interstate AQCR. Ironically, the reason that the Administrator gave for disapproving several of the States' proposals, including the inspection and maintenance programs,

[14] WMATA is an independent corporate body created by compact between Maryland, Virginia, and the District of Columbia with the approval of Congress. The compact is discussed in detail in Argument IV at pp. 78-85 *infra*.

[15] The States' plans were submitted, in the case of Maryland and Arizona by the Governor, and, in the case of Virginia by the State Air Pollution Control Board. The Virginia plan expressly stated that implementation of the inspection and maintenance program depended upon the approval of the Virginia legislature and further cautioned that the Board could not guarantee the commitment of funds for the purchase of additional buses by WMATA (A. 905-910).

the exclusive bus lane provisions, and the purchase of additional buses by WMATA, was the failure of the States to demonstrate that they had the requisite legal authority to implement and fund those transportation control strategies.[16]

As noted above, Section 110(c) of the Clean Air Act requires the Administrator, if he disapproves a state plan in whole or in part or if a state fails to submit a plan, to promulgate his own implementation plan designed to attain the ambient air quality standards. With respect to the States, the Administrator apparently believed that he could comply with this Section 110(c) requirement by merely adopting regulations ordering them in turn to develop, establish, implement, and enforce a large number of transportation control strategies. The Administrator's regulations, promulgated during November and December of 1973, required the States to undertake, by legislation and regulation, such measures as:

—inspection and maintenance programs for various classes of vehicles;

—retrofit programs requiring emission control devices of an unspecified type on various classes of older vehicles;

—restrictions on the use of motorcycles;

[16] *See, e.g.*, 40 C.F.R. §§52.474 (A. 621), 52.1074 (A. 652), 52.2430 (A. 686).

For example, 40 C.F.R. §52.2430 *Legal Authority*, identifying shortcomings in the state-submitted implementation plan of Virginia provides:

> (a) The requirements of Section 51.11(c) of this chapter are not fully met because the plan does not adequately identify or provide copies of all laws or regulations necessary for implementing the transportation control measures. (b) The requirements of Section 51.11(f) of this chapter are not fully met because it is not clearly demonstrated that all local agencies have requisite legal authority, or that the State retains responsibility for implementing the transportation control measures.

—express bus and carpool lanes on major transportation corridors;

—computerized carpool information services;

—a network of bicycle lanes and storage facilities;

—elimination of free on-street commuter parking;

—parking surcharges;

—a gasoline rationing program for the Metropolitan Baltimore Intrastate AQCR and the five California AQCR's;

—the establishment of commercial rates at federal parking facilities in Washington D.C.; and

—the purchase of a total of 475 additional buses by WMATA.

Thus, the significant modification made by the Administrator to the State-submitted plans in each instance was the imposition of a requirement that the States enact and enforce laws and regulations necessary to carry out the various programs. For example, on November 21, 1973 the Administrator approved Arizona's inspection and maintenance program as submitted by the Governor but added the mandate that Arizona must submit, within two months, proposed legislation and regulations and funding authority and, within five months, evidence confirming their enactment and adoption.[17]

The Administrator's regulations with respect to the other transportation control strategies followed a similar pattern. The States were ordered to submit

[17] 40 C.F.R. §52.132(c) (A. 573-75) provides:

> To implement the approved control measures . . . the State of Arizona must submit to the Administrator . . .
>
> (1) No later than February 1, 1974 . . . (i) The text of proposed legislation and regulations for the inspection and maintenance program . . . (ii) A signed statement from the governor or his designee identifying the sources and amounts of funds for the programs. If the funds can not legally be obligated under existing statutory authority, the text of needed legislation shall be submitted. (iii) The date by which the State will recommend all needed legislation to the State legislature . . .
>
> (2) No later than May 1, 1974, the legislative authority for implementing the inspection and maintenance program . . .
>
> (3) No later than September 1, 1974 the adopted regulations and administrative policies necessary for implementation of the control measures . . .

legally adopted regulations, containing specified provisions, establishing the particular program. The Administrator specifically directed the States to provide for enforcement procedures and sanctions and penalties for violations of those regulations. The States were also ordered to submit detailed compliance schedules containing the text of needed legislation and regulations, the date the State would recommend needed legislation to the State legislature, and a signed statement from the Governor or his representatives identifying the sources of funds for the program and the text of any legislation needed to appropriate the funds.[18]

Section 113 of the Clean Air Act provides for federal enforcement of implementation plans and imposes civil and criminal sanctions for violations of those plans.[19] The Administrator's regulations provide that if a governmental entity fails to comply with the provisions of an implementation plan, it will be subject to an enforcement action under Section 113. Noncompliance is defined as failure to submit a compliance schedule required by an implementation plan, failure to include the required elements in a compliance schedule, or failure to comply with the schedule.[20]

[18] *See, e.g.*, 40 C.F.R. §§52.242, 52.490, 52.1089, 52.1095 and 52.2441 (Inspection and maintenance program); 40 C.F.R. §§52.476(g), 52.1080(g) and 52.2435(e) (Purchase of buses by WMATA).

[19] 42 U.S.C. 1857c-8. Section 113(c) of the Clean Air Act provides for fines of up to $25,000 a day and a prison term of not more than one year.

[20] 40 C.F.R. §52.23. *See* p. 31 *infra*.

The States note that the present Administrator disclaims any intention to seek criminal penalties against state officials and represents that he will seek to obtain compliance by administrative orders and administrative conferences.[21] However, the Administrator's mood has not always been so conciliatory. He has threatened to seek drastic sanctions in order to gain compliance with his regulations including the imposition of a receivership on certain state functions, holding state officials in civil contempt and imposing substantial daily fines, and requiring a state to allocate funds from one portion of its budget to another. *Brown v. Environmental Protection Agency*, 521 F.2d 827, 831 (9th Cir. 1975).[22]

After the Administrator promulgated final regulations imposing on the States the requirement to develop and implement transportation control strategies, the States petitioned the appropriate Courts of Appeals for review of the regulations pursuant to Section 307 of the Clean Air Act.

While Maryland's and Virginia's petitions were pending in the courts, state agencies in both States sought legislation establishing vehicle inspection and maintenance programs. In 1973, the Maryland Department of Transportation submitted proposed legislation to the General Assembly which would have given the Motor Vehicle Administration the power to conduct

[21] Brief for the Federal Parties at 38 n. 32.

[22] The Administrator has recently filed an enforcement action in the United States District Court for the Southern District of Ohio seeking to enjoin, and seeking "other and further relief", against the Ohio Department of Highway Safety and its Director from issuing license plates to vehicles in the Ohio portion of the Metropolitan Cincinnati Interstate AQCR which have failed to comply with EPA-mandated emission standards. *United States v. Ohio Department of Highway Safety*, Civ. No. C-2-76-835 (S.D. Ohio, filed Nov. 19, 1976).

annual emission tests and to deny registration to vehicles that failed to comply with emission standards set by the Maryland Department of Health and Mental Hygiene. Similar legislation was submitted by the Governor in 1974. In both years, the proposed legislation was defeated in committee.[23]

The Virginia Air Pollution Control Board also requested legislative authority from the 1974 Virginia General Assembly for an inspection and maintenance program. One bill, H.B.668, proposed a decal or sticker system for enforcement, similar to Virginia's safety inspection program. Another bill, H.B. 1014, provided for the denial of registration to vehicles that failed the emission inspection test. The committee to which the bills were referred voted to carry over the bills to the 1975 legislative session.

In 1975, the bill creating the above described emission inspection program was substantially amended by the House of Delegates to create a voluntary program during 1975, but effective only if the District of Columbia and Maryland enacted similar legislation. In the Virginia Senate, the bill was further amended to exclude Prince William County and the City of Alexandria, and it was then enacted into law.[24] The second bill providing for the denial of registration was killed in committee.

The situation with respect to the Administrator's regulations that require the purchase of additional buses by WMATA is described at Argument IV *infra*.

SUMMARY OF ARGUMENT

This case presents important questions concerning the proper role of the federal government and the states

[23] House Bill 321, introduced January 12, 1973. Maryland House Journal (1973) at 185. House Bill 1405, introduced March 4, 1974. Maryland House Journal (1974) at 1256.

[24] Virginia Acts of Assembly, Ch. 342 at 570 (1975).

in the federal system. Framed most broadly, the issue before this Court is whether a federal executive officer can force the states to use their legislative and executive powers to implement federal programs.

This issue arises in the context of the Administrator's regulations, issued under the Clean Air Act, which require the States to enact and enforce laws and regulations establishing air pollution control programs under threat of civil and criminal penalties. The specific regulations at issue here require the States to establish complex vehicle emission inspection and maintenance programs, and require Maryland, Virginia and the District of Columbia and their local jurisdictions to expend approximately $34 million for new buses for public transportation and to set aside express bus lanes on extensively travelled highway corridors. The implications of those regulations for the States are appalling. The Administrator's programs at issue here will make at best a small contribution to achieving the ambient air quality standards required by the Clean Air Act. Thus, the Administrator must develop numerous additional programs to comply with the mandate of the Act, and if those programs follow the form of those he has selected for review in this case, their impact on the State, although impossible to predict precisely, would be enormous.

The Administrator's transportation control regulations suffered serious setbacks in the Courts of Appeals, three out of four of which held that the Clean Air Act does not authorize the Administrator to require the states to legislate or adopt regulations. Faced with that rebuff, the Administrator, with a surprising lack of candor, represents to this Court that his regulations have never required the States to legislate. He also maintains that he will withdraw all parts of the regulations which require the States to submit regulations and that he will now require the States only to

"implement" his programs. The States urge that this Court must review the Administrator's regulations as he issued them and threatened to enforce them, and not on the basis of his eleventh-hour concessions. There is no substantive difference between the Administrator's new position and that expressed in his current regulations. The States cannot implement a federal program without legislating and adopting regulations.

The Administrator's assertion of the power, both under the Clean Air Act and the Constitution, to require the States to legislate and regulate and to enforce federally dictated programs rests on a deceptively simple syllogism. He argues that motor vehicles cause air pollution, that the States have encouraged the use of motor vehicles by governmental policy decisions with respect to the public highways, and therefore the States, as owners and operators of the highways, are polluters subject to federal regulation. The syllogism is riddled with weaknesses.

Neither the structure nor the history of the Clean Air Act contain any hint that Congress intended to treat the states as polluters, subject to the enforcement provision of Section 113, because they own and operate the roads or because they are unable or unwilling to establish, implement or enforce the Administrator's programs. Under Section 110 and Section 113, the states have the primary responsibility to develop and enforce, respectively, air pollution control programs. The federal government's role under Section 110 is to review and approve the states' programs and to promulgate a federal plan if the state plan will not achieve the air quality standards. Section 113 creates a parallel enforcement role for the federal government. If the states cannot, because they lack authority or because they have established other priorities, implement and enforce the Administrator's programs, the Administrator must assume implementation responsibility for those functions himself.

The Administrator's assertion of the power to force the states to exercise their governmental powers on his behalf represents arrogant defiance of almost two hundred years of cooperation between the federal government and the states. In the past, the federal government has always had ample power to achieve its purposes by acting directly on private individuals, by conditioning availability of federal funds to the states on their compliance with federal standards and by preempting state activities that interfere with federal goals. The Administrator bears a heavy burden to establish that Congress discarded those time-honored methods and opted for the heavy hand of coercion. The States submit that he has not met that burden.

To support his radical assertion of federal power, the Administrator must rely on two novel constitutional theories. First, he asserts that state governmental policies with respect to the public highways, including the failure of the states to regulate private individuals whose vehicles cause air pollution, constitutes a burden on interstate commerce. Second, he argues that under the Commerce, Necessary and Proper and Supremacy Clauses he possesses the power to require the States to exercise governmental powers to regulate private individuals who use the highways. The Administrator finds no support for those constitutional theories in the structure of the Constitution, or in any decision of this Court.

His assertion of the power to conscript the legislative and executive powers of the States violates three fundamental structural principles of our federal system, all of which emerge with remarkable clarity from the history of the Constitution. First, the Constitution limits the powers of the federal government to specific subjects, such as interstate commerce. The legislative and executive powers of the States are not commerce in the constitutional sense.

Second, as this Court has repeatedly recognized, "there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter but because the Constitution prohibits it from exercising the authority in that manner." *National League of Cities v. Usery*, 96 S. Ct. 2465, 2471 (1976). The Administrator's regulations displace the functions that are most "essential to separate and independent existence," the governmental processes of the states. *Id.*

Third, the Supremacy Clause, as the constitutional mechanism for resolving conflicts of federal and state power, permits Congress to preempt state action or to require the states, if they choose to act at all, to regulate interstate commerce to conform to federal standards. It is not an independent source of federal power under which Congress can require the states to exercise their essential governmental functions.

ARGUMENT

I.

THE ADMINISTRATOR HAS CONCEDED THAT THE REGULATIONS AT ISSUE IN THIS CASE ARE INVALID.

The Administrator's regulations, by their very terms, require the States to enact legislation and adopt regulations. All of the Courts of Appeals below read the Administrator's regulations to impose such a requirement. Indeed, until his opening brief in this Court, the Administrator had always confidently asserted the power to require the States to enact legislation and adopt regulations.

In that brief the Administrator retreated from the position he consistently took before the Courts of Appeals. He now states that he has never asserted the

power to direct the States to enact legislation establishing transportation control plans.[25] Furthermore, he desperately attempts to rewrite his own regulations in a footnote to his brief by "conced[ing] the necessity of removing from the regulations all requirements that the States submit legally adopted regulations . . ."[26] With respect to the vehicle inspection and maintenance program, the Administrator now acknowledges that if the States fail to adopt an adequate plan, he must then promulgate "a comprehensive substitute plan, specifying such matters as the types of vehicles to be inspected, the standards that must be met and the frequency of inspection. The State must then implement the program by establishing the necessary inspection facilities, conducting inspections, refusing to register

[25] Brief for the Federal Parties at 20 n. 14, 54. Despite his current assertions to the contrary, in his brief in the Court of Appeals for the Fourth Circuit, the Administrator "boldly" took the position that his regulations "require the State to enact enabling legislation." *Maryland v. Environmental Protection Agency*, 530 F.2d 215, 224 (4th Cir. 1975). In the Ninth Circuit, the court described the Administrator's position as asserting the power to "direct that a state . . . enact such laws to control air pollution as the Administrator might require . . ." *Brown v. Environmental Protection Agency*, 521 F.2d 827, 838 (9th Cir. 1975). In the Court of Appeals for the District of Columbia the Administrator disclaimed any intention to compel state officials to enact laws or adopt regulations, but he clearly asserted the power to do so. *District of Columbia v. Train*, 521 F.2d 971, 982 n. 19 (D.C. Cir. 1975). The Court of Appeals for the Third Circuit found that the regulations "will require the Commonwealth [of Pennsylvania] to exercise its legislative and administrative powers, for that is the means by which a state regulates its transportation system." *Pennsylvania v. Environmental Protection Agency*, 500 F.2d 246, 262 (3rd Cir. 1974). Finally, in his petition for a writ of certiorari in *EPA v. Brown*, the Administrator asserted the power to compel the states to implement his substitute vehicle inspection and maintenance program ". . . although this may require . . . enactment of complementary state legislation." October Term 1975 Pet. No. 75-909 at 17-18.

[26] Brief for the Federal Parties at 20 n. 14.

nonconforming vehicles, and enforcing its registration laws."[27] There are two fundamental defects in the Administrator's new position.

A. The Regulations As Promulgated Require The States To Legislate, And The States Are Entitled To Have This Case Decided On That Basis.

The regulations that are before this Court for decision are those which the Administrator promulgated in 1973 and which were considered by the Courts of Appeals below. Significantly, the Administrator has never amended or withdrawn the regulations in accordance with the provisions of the Clean Air Act, and he cannot, by means of a footnote in a brief to this Court, jettison regulations that are clearly invalid and then divert this Court's attention to hypothetical regulations which he now considers more defensible.

The Administrator's regulations as promulgated speak only to the states. They expressly require the states to enact laws, to submit legally adopted regulations and to engage in other acts of governance which establish a complex vehicle inspection and maintenance program, commit the States and their subdivisions to the purchase of buses, and create exclusive one-way bus lanes in specified corridors in metropolitan areas. Failure to comply with the Administrator's regulations exposes state officials to criminal and civil penalties and other sanctions under Section 113 and 40 C.F.R. §52.23 and to citizen suits brought pursuant to Section 304 of the Clean Air Act. The States take cold comfort from the Administrator's representations that he will not enforce his regulations by using all available sanctions. At no time has the Administrator renounced the proposition that he has the statutory and constitutional power to impose civil and criminal penalties on state officials who fail to comply with his directives.

[27] *Id.*

Furthermore the Administrator has not complied with his latest interpretation of what the Clean Air Act requires him to do after he disapproves a transportation control plan submitted by a state. Clearly, he has not promulgated, as he now concedes he is required to, either an adequate substitute inspection and maintenance program or a comprehensive substitute transportation control plan.

The Court of Appeals for the District of Columbia found that the Administrator's "plan", far from being comprehensive, merely "shove[d] the responsibility for adopting regulations back onto the states." *District of Columbia v. Train,* 521 F.2d 971, 982 (D.C. Cir. 1975). For example, although the Administrator represents to this Court that his vehicle inspection and maintenance regulations contain emission standards and limitations, in fact they do not, and the Court of Appeals for the District of Columbia specifically so held. *Id.* at 986-87, 995.[28] Those regulations, as now in effect, merely require that the States themselves establish "inspection failure criteria consistent with the failure of [a specified percentage] of vehicles in the first inspection cycle."[29] Because of that deficiency, and similar deficiencies with respect to other transportation control strategies, the Court of Appeals for the District of Columbia held that the Administrator had failed to comply with his obligation under Section 110(c) of the Clean Air Act to promulgate complete substitute programs which would attain air quality standards. *Id.*

[28] The Court of Appeals remanded the inspection and maintenance regulations and retrofit regulations to the Administrator with directions that he promulgate a full set of regulations for the attainment of air quality standards as required by the Clean Air Act, *District of Columbia v. Train,* 521 F.2d 971, 987, 995 (D.C. Cir. 1975). The Administrator has not sought review by this Court of that determination. October Term 1975 Pet. No. 75-909 at 17 n. 15.

[29] *See, e.g.,* 40 C.F.R. §52.1095(c)(2) (Baltimore Intrastate AQCR).

Furthermore, this Court does not have before it a comprehensive substitute transportation control plan as required by Section 110 (c) of the Clean Air Act. The Administrator has asked this Court to review only his regulations ordering the States to establish inspection and maintenance programs, to commit funds for additional buses, and to establish one-way bus lanes. However, the Courts of Appeals below held invalid other provisions of the Administrator's transportation control regulations, such as the bikeways program and the program to retrofit older vehicles with pollution control devices. The Administrator has not sought review of those decisions. Moreover, the Administrator has withdrawn all provisions of his plans imposing parking control measures,[30] as well as those requiring gasoline rationing.[31]

The Administrator required the States to adopt the numerous transportation control strategies because he determined that all were necessary to attain the ambient air quality standards required by the Clean Air Act. The individual components of the plan were designed to be implemented together to achieve the statutory goal. None of those strategies was ever intended to be sufficient, standing alone.

For example, in the transportation control plan for the Baltimore Intrastate AQCR, the Administrator ordered Maryland to establish a medium and heavy

[30] Congress also amended the Clean Air Act in 1974 by prohibiting the Administrator from instituting a parking surcharge, although he may approve such a measure if it is submitted by a state as part of a plan. 42 U.S.C. 1857c-5(c)(2)(A) and (B); Clean Air Act §110(c)(2)(A) and (B).

[31] 41 Fed. Reg. 45565 (October 15, 1976). Appendix B *infra* In withdrawing the gasoline rationing regulations, the Administrator conceded that "this revocation will render the affected SIPs [State Implementation Plans] defective as a legal matter, since such SIPs will no longer contain regulations which provide for NAAQS [national ambient air quality standards]."

duty vehicle emission inspection and maintenance program in order to make certain that the medium and heavy duty vehicle retrofit programs would achieve their purpose.[32] Now that the Administrator has apparently abandoned the retrofit programs, his inspection and maintenance regulations for medium and heavy duty vehicles in Maryland have no independent validity. Similarly, the purchase of additional buses by WMATA was designed as part of an overall strategy to encourage the use of public transportation and to discourage the use of the private automobile by instituting such disincentives as the parking surcharge and other parking control measures. The Administrator has never reevaluated the need for additional buses in light of the elimination of the parking control measures from his plan.[33]

Thus, the Administrator's transportation control plans in the States are in shambles. He recognizes that the transportation control regulations at issue in this case are invalid as written because they require the States to adopt laws and regulations. Consequently, he is attempting to put before the Court a regulatory scheme, radically different from his 1973 regulations, under which he would establish programs such as the inspection and maintenance program which the States will be required to implement and enforce.

Although the Administrator attempts to present his new regulatory scheme to this Court in the narrow context of a vehicle inspection and maintenance program, the States emphasize that the inspection and maintenance program is but one of the few surviving elements of a complex transportation control plan designed to achieve the ambient air quality standards required by the Clean Air Act. The Administrator has abandoned most of the other elements of that compre-

[32] 40 C.F.R. §§52.1099(d)(4), 52.1100(d)(4); (A. 727, 762-65).

[33] *See* discussion in Argument IV C at pp. 83-84 *infra*.

hensive plan, at least in the sense that he is not seeking review of them by this Court. However, he is still required by the Clean Air Act to promulgate a plan which will achieve statutory air quality standards. To do this he will be required to develop additional programs, all of which, under his proposed regulatory scheme, he will then require the States to set up and enforce.

The States are of the view, for reasons set forth in this brief, that the Administrator's proposed scheme would be invalid. However, the States urge that such a regulatory scheme is not before the Court at this time and that the Court should render a decision on the regulations as the Administrator has issued them and not as he would now choose to rewrite them.

B. Implementation And Enforcement Of Any Emission Inspection And Maintenance Regulations Promulgated By The Administrator Would Require The States To Enact Legislation And Adopt Regulations.

The Administrator argues that the States will be required to take three steps under the inspection and maintenance regulations, as he now chooses to construe them. First, the States must implement the program. Second, the States must deny registration to vehicles that fail to comply with whatever emission standards he issues. Finally, the States will be required to enforce their motor vehicle laws against drivers of vehicles that do not comply with the emission standards. According to the Administrator's current position, nothing in his new regulatory scheme requires the States to legislate or adopt regulations. If it does, the Administrator concedes that the regulations would be invalid.

Any regulations requiring the States to implement and enforce a federal regulatory scheme will require the States to enact laws and regulations and engage in other sovereign acts of governance. For each State, the

single most important piece of legislation is its annual operating budget. It is that legislation which establishes priorities and programs through the appropriation of funds. The Administrator recognized that legislation was a precondition to an effective State transportation control plan when he disapproved the States' plans on the grounds that they failed to demonstrate the legal basis for implementation and when he issued his substitute plans which require the States to submit the necessary legislation and regulation as part of their compliance schedules.

His contorted efforts to avoid that fact at this late date, and his statement that the federal regulations themselves provide the basis for the Stat to carry out his program,[34] demonstrate his profound misunderstanding of the nature of our federal system of government. State governments derive their powers to act from state laws and constitutions. A federal official has no power under the Commerce Clause, the Necessary and Proper Clause, or the Supremacy Clause to confer upon state agencies or officials powers which the state legislature has not granted, and then require those state officials to exercise those powers under threat of criminal and civil sanctions.[35] The Administrator cites no decision of this Court, or any court, in support of his assertion of the power to do so.

There is also no authority under the States' laws now in effect to enforce the Administrator's emission

[34] Brief for the Federal Parties at 53-54. The Regional Administrator of Region VI has either not been informed of the Administrator's novel constitutional theories or he finds them unpersuasive. In his comments to the proposed amendments to the transportation control plans for the Texas AQCR's, the Regional Administrator stated that "implementation of any mandatory state inspection and maintenance program in Texas will not begin until the Texas legislature takes affirmative action on such a program." 41 Fed. Reg. 49848 (November 11, 1976).

[35] See Argument III of this Brief.

inspection and maintenance program. For example, his regulations require the States to conduct spot checks and to impose penalties on individuals who modify their vehicles after inspection so that those vehicles no longer meet the emission standards.[36] The States cannot impose a primary duty on motor vehicle owners to maintain the required emission controls, create enforcement procedures and impose sanctions against violators without enacting legislation and adopting regulations. If the Administrator were to issue federal regulations imposing such a duty on private individuals and creating sanctions for violations, then the States, in the absence of state enabling legislation, would have no authority to enforce, and could not be compelled to enforce, those regulations.[37] If the federal regulations provided for criminal sanctions, the state courts could not exercise jurisdiction over violations unless Congress specifically so provided.[38]

In summary, the Administrator concedes that he cannot directly order the States to legislate, but he claims that he can create and describe a particular governmental program and then order the States to establish that program. That "implementation and enforcement" of the federally dictated program necessarily requires the States to legislate and regulate is not viewed by the Administrator as significant.

The States submit that the Administrator's concessions in his opening brief represent a transparent effort to salvage the device he seized upon to avoid his statutory responsibility to fund and enforce his own

[36] *See, e.g.*, 40 C.F.R. §52.490(c)(4), 52.1089(c)(4), 52.2441(c)(4).

[37] *See generally*, Charles Warren, *Federal Criminal Laws and the State Courts*, 38 Harv. L. Rev. 545, 546 (1925).

[38] 18 U.S.C. 3231 provides that "[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

programs in the event the States were unable or unwilling to act. The Administrator's regulations, both as promulgated and as proposed, require the States to enact laws and regulations, and in so doing violate both the Clean Air Act and the Constitution of the United States.

II.

THE ADMINISTRATOR LACKS AUTHORITY UNDER THE CLEAN AIR ACT TO REQUIRE THE STATES TO ENACT LAWS, ADOPT REGULATIONS, AND ENFORCE FEDERALLY MANDATED REGULATORY PROGRAMS.

The Administrator has endeavored in his opening brief at pages 26 through 40 (particularly pp. 36-40) to link together Section 110 of the Clean Air Act, relating to plan development, and Section 113, relating to federal enforcement of plan violations. This effort is made to support a finding not simply that a state is a "person" but that it is a "person . . . in violation" of the Act when it fails to legislate against, appropriate monies for and otherwise regulate according to federal standards the pollution-creating activities of its own private citizens. This *tour de force* is aided by the mechanism of an extraordinary, one-paragraph EPA regulation (40 C.F.R. §52.23), the full text of which is set out at page 31 *infra,* which states that a "person or governmental entity" becomes subject to the civil and criminal sanctions of Section 113 when it fails to comply with federal implementation plan regulations. The emission inspection and maintenance of private vehicles, bus lane and bus fleet "strategies" are, of course, just such regulations.

Ordinary principles of statutory construction as well as the legislative history of not only Section 110 and Section 113, but of the entire Clean Air Act and its predecessors dating from 1955, provide no basis whatsoever for this Procrustean analysis. Congress

provided a straight-forward approach for curing inadequacies in state plans or inabilities of states to carry out plans, namely the assumption by EPA, with federal dollars and staff under a federal plan, of the enforcement function against private citizens in violation. Congress did not offer EPA the option of redelegating this function. This being the case, the Administrator's word games (indirect/direct pollution sources; indirect/direct state legislation requirement; state as polluter/state as operator of pollution-creating source/state as state) pale into insignificance and irrelevance.

A. THE 1970 AMENDMENTS TO THE CLEAN AIR ACT DO NOT MARK A DEPARTURE FROM THE STATUTE'S HISTORY OF COOPERATIVE FEDERALISM.

The 1963 Clean Air Act established the principle of deference to rather than coercion of the states in air pollution control matters.[39] Section 1 of that Act for the first time provided, in relevant part ". . . that the prevention and control of air pollution at its source is the primary responsibility of states and local governments . . ."[40] Far from evidencing any intent to coerce state action, the role of the federal government was clearly to be one of cooperating with and encouraging state efforts. The major innovation in the 1963 Clean Air Act was that the federal government assumed a more prominent role in that it was required to set non-mandatory air quality criteria. It could intervene directly when the states were unable to cope with an air pollution emergency.

[39] Pub. L. 88-206, 77 Stat. 392.

[40] The concept of primary state and local responsibility was taken directly from the Senate Report on the 1955 air pollution act (Act of July 14, 1955, ch. 360, 69 Stat. 322), which merely provided research funds and technical assistance to the states.

Still greater federal involvement arose from amendments to the basic Act in 1965[41] and 1967.[42] The 1965 Act first brought the federal government into the area of auto emission controls by placing standard-setting powers within federal jurisdiction. That Act was also the first to impose mandatory federal air quality criteria, with the states retaining the role of setting emission standards and developing implementation plans. The 1967 Act went further in that direction by granting the federal government the exclusive authority to set not just criteria but the emission levels of automobiles.

The 1970 amendments are merely an extension of prior amendments which accorded to the federal government increasing responsibilities for the direct enforcement of pollution controls. As discussed below, there is nothing in the history of the 1970 amendments which would support the conclusion that Congress intended a marked departure from this historical trend by using the federal commerce power to commandeer the police power of the states, an action never before attempted in air pollution legislation or, for that matter, in any legislation.

B. The Structure Of The Clean Air Act Contemplates That States Might Not Act, The Sole Remedy For Such Inaction Being Federal Planning And Enforcement.

Section 110 of the Clean Air Act[43] provides that "[e]ach State shall . . . adopt and submit to the Administrator . . . a plan which provides for implementation, maintenance and enforcement of such primary standard in each air quality control region (or portion

[41] National Emissions Standards Act, Pub. L. 89-272, 79 Stat. 992.

[42] Air Quality Act of 1967, Pub. L. 90-148, 81 Stat. 485.

[43] 42 U.S.C. 1857c-5.

thereof) within such State."[44] Within four months after the date required for submission of a plan, the Administrator must approve or disapprove the plan, in whole or in part.[45]

In the event that the state fails to submit a plan or the plan is inadequate or the state fails to revise its plan adequately, the Administrator's course of action is charted:

> The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State . . . .[46]

Thus, the states are given the opportunity of retaining responsibility for the design and implementation of air pollution strategies. In the event the states decline to act, the Act authorizes the federal agency to occupy the field itself and to enact the regulations necessary to the achievement of air quality standards.

In light of the fact that the Administrator is specifically directed to promulgate a plan himself in case the state fails to submit a plan, he does not have the alternative or concurrent remedy of jailing or fining officials of a recalcitrant state for failure to submit a plan. The Administrator's sole remedy is to promulgate his plan. As the court stated in *Plan for Arcadia v. Anita Associates*, 379 F. Supp. 311, 314 (C.D. Calif. 1973), *aff'd*, 501 F.2d 390 (9th Cir. 1974):[47]

[44] 42 U.S.C. 1847c-5(a)(1); Clean Air Act §110(a)(1). *See also* Clean Air Act §107(a) (42 U.S.C. 1857c-2(a)) which provides "[e]ach State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan. . . ."

[45] 42 U.S.C. 1857c-5(a)(2); Clean Air Act §110(a)(2).

[46] 42 U.S.C. 1857c-5(c)(1); Clean Air Act §110(c)(1).

[47] In that case private citizens sought (1) to enjoin further construction of a shopping center on the ground that, when completed, it would attract such concentration of vehicular

> [T]here is no judicial remedy provided in the Act or elsewhere for the failure of the state to adopt and submit a plan. The only consequence of a state's failure to submit a plan is that the Administrator then, has the duty to impose a plan upon the state, and no other remedy against the state exists.

Section 113 of the Clean Air Act[48] in turn provides that the state shall have an initial opportunity to enforce the applicable implementation plan. If the Administrator finds that the state is not enforcing the plan in an individual instance[49] or is allowing widespread violations,[50] the Administrator notifies the state, giving it thirty days to cure its failures. If the state still has not acted, the Administrator either takes action against the individual violator, or enforces the Act against all violators, depending upon whether the state's failure to act was specific or general. Section 113(a)(2) authorizes the Administrator to take over direct federal enforcement of an implementation plan when he discovers widespread failure of the state to enforce the plan, and it carefully circumscribes the manner in which the Administrator may act.

Thus, Congress specifically considered the eventuality that the states might fail to administer or enforce an applicable implementation plan. The remedy Congress provided for such a failure by a state is identical to the remedy available should a state fail to submit an implementation plan in the first instance as required by Section 110 of the Act: the Administrator simply steps in and takes over the function himself. There is no hint

traffic as would raise ambient air pollution above the national air quality standards established pursuant to the Clean Air Act, and (2) to compel the State of California to comply with §110 of the Clean Air Act (42 U.S.C. 1857c-5), which requires each state to submit a plan to the Administrator.

[48] 42 U.S.C. 1857c-8.

[49] 42 U.S.C. 1857c-8(a)(1); Clean Air Act §113(a)(1).

[50] 42 U.S.C. 1857c-8(a)(2); Clean Air Act §113(a)(2).

of any compulsion upon the state to act or of fines or imprisonment to be visited upon state officials who decline to do so. The sole "stick" which Congress intended to take to the states is that, to the extent that they failed to enforce federal standards and regulations with respect to air pollution, they would have enforcement matters removed from their hands.

Although the entire history and structure of the Clean Air Act evidences a pervasive deference to the states and negates any intention to coerce the states to act, the Administrator attempts to tie the statute in knots. Section 113 offers the states the opportunity to administer and implement a plan. The only result of failure to do so is federal enforcement. The Administrator, by ordering the states to administer and enforce his plans and by denominating failure to do so a violation under Section 113, is seeking to frustrate congressional intent.

The Administrator's regulation at issue provides:

> Failure to comply with any provisions [of the federal regulations on "Approval and Promulgation of Implementation Plans"] . . . shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. With regard to compliance schedules, a person or Governmental entity will be considered to have failed to comply with the requirements [of the federal regulations on "Approval and Promulgation of Implementation Plans"] if it fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule.[51]

[51] 40 C.F.R. §52.23, promulgated at 39 Fed. Reg. 33512 (Sept. 18, 1974), part of "General Provisions" applicable to all implementation plans. Similar provisions were theretofore contained in the federal plans for the AQCR.

Section 113(c)[52] of the Clean Air Act provides that for a first violation a person may be fined up to $25,000 per day of violation or imprisoned for not more than a year, or both, and, for a second and further violation, a fine of up to $50,000 per day of violation or imprisonment for a maximum of two years, or both, may be imposed.

Congress never intended to expose state officials to fines or imprisonment for failure to successfully carry out the Administrator's own statutory responsibilities. The Administrator's actions are a perversion of congressional intent. He seeks to ignore that intent by semantic sleight of hand and by rummaging about in the ashcans of the legislative process for the scattered, chance remarks of a few senators and congressmen. It is to these matters that we now turn.

C. The Language Of The Clean Air Act Does Not Support The Administrator's Position That The States May Be Forced To Administer And Enforce Implementation Plans.

1. *Section 113 Permits Sanctions Against A State That Pollutes The Air, But Does Not Contemplate Finding A State "In Violation" Of A Plan If It Chooses Not To Regulate Polluters As The Administrator Directs.*

Properly seen, the intent of Section 113 is not to coerce a state to act but to prohibit the Administrator from acting until he has satisfied the precondition of deferring to that state. The thrust of that section is that the Administrator may not inject himself into an enforcement situation unless the state is given the opportunity to act first.

Surely, if Congress had intended to take the unprecedented step of coercing a state to act in order to conserve federal resources, it would have granted the Administrator the power in clear and specific language

[52] 42 U.S.C. 1857c-8(c).

to order the state to take action against violators.[53] Similarly Congress would have used clear and specific language if it intended to empower the Adminstrator to proceed against state officials under sections 113(b) or (c) if the state failed to act.[54] If the violations are "widespread" (section 113(a)(2)), such a course would be far more "efficient" from the Administrator's point of view. Yet Congress did not so provide.

The Administrator's enforcement regulation endeavors to place the failure of a state to legislate or otherwise act according to his directions within the class of "violation of any requirement of an applicable implementation plan." The statute, however, does not support this approach. Section 113(a)(2) deals with a situation where "violations appear to *result from* a failure of the State, in which the plan applies, to enforce the plan effectively" (emphasis added). There is no hint that the failure of a state to act would, in itself, be a violation on the part of that state or its officials. The conclusion is inevitable that the term "violation" refers to pollution "result[ing] from" the emission of pollutants into the air in contravention of the provisions of an applicable implementation plan.

Before federal enforcement of a plan is allowed, for example, two notices must be given: one notice to the state and a second notice to the individual polluter, in case of a single violation, or to the public in case of numerous individual violations. If Congress had expected that the states would be compelled, under pain of federal penalties, to use their police power to enforce

[53] Under Section 113 (a) (1), at the same time an individual violator is given notice of his violation the state is, likewise, advised of the violation and given an opportunity to bring the violator into compliance before EPA may pursue federal enforcement action.

[54] But such action, even if authorized by the Clean Air Act, would be unconstitutional. *See* Argument III *infra*.

the plan, there would be no reason for requiring that *two* notices be given.

The Administrator continues by maintaining that, because the term "person" is defined in section 302(e) of the Act[55] to include a state, he may bring an action against a state for failing to exercise its police powers to control private polluters.[56] This is a *non sequitur.* Section 113 does not authorize enforcement actions against *any* person, but only against persons "in violation". The controlling question is *not* whether a state is a "person" under the Clean Air Act, but whether a state's failure to bow to the Administrator's demand that it exercise its police power in a manner determined by him, in order to control private pollution-causing activities which the Administrator is empowered to control, was intended by Congress to be a "violation" of an implementation plan.

The obvious reason why "person" was defined so as to include a state was that Congress intended to regulate state pollution-causing activities in the same manner as private pollution-causing activities. Thus, if a state owned an incinerator or a fleet of motor vehicles, those sources must conform to otherwise valid federal standards. Nothing in the Clean Air Act, however, suggests that the Administrator could force the states to govern the pollution-creating activities of others as he directs, and fine or imprison state officials should they refuse. The reason such sanctions cannot be imposed on a state is not because the state fails to qualify as a "person," but because the inability or unwillingness of a state to yield to the Administrator's dictates is not a "violation". The Administrator was never empowered to make such demands.

In short, the argument that Congress left such a coercive and unprecedented intent lurking within the

[55] 42 U.S.C. 1857h(e).

[56] Brief for the Federal Parties at 38-40.

definition of "person" cannot prevail. As the Ninth Circuit observed:

> "The Administrator had no difficulty in making clear his intention to impose sanctions on States not enforcing effectively implementation plans. Congress can be expected to have no less capacity for clarity.[57]

2. *No Valid Distinction Can Be Made Under The Clean Air Act Between Forcing The States To Legislate And Forcing The States To Administer EPA-Promulgated Transportation Control Programs.*

The Administrator, relying on the opinion of the District of Columbia Court of Appeals, seeks to find a distinction under the Clean Air Act between ordering the states to adopt particular statutes and ordering them to implement federal regulations, which implementation necessarily requires the adoption of auxiliary statutes or state regulations.[58] In *District of Columbia v. Train, supra,* the court found it permissible under the Clean Air Act for the Administrator to force the states to purchase a fleet of buses, install bus lanes, and to deny registration of vehicles which do not pass a federally administered inspection test. This holding is directly contrary to those of the Fourth and Ninth Circuits.[59]

The Administrator offers no rationale for this "distinction". The unpersuasive rationale of the District of Columbia Court of Appeals for holding that those

[57] *Brown v. Environmental Protection Agency,* 521 F.2d 827, 834 (9th Cir. 1975). *See, Hancock v. Train,* 96 S. Ct. 2006, 2022 (1976); *Friends of The Earth v. Carey,* 74 Civ. 4500 at 7-8, 9 ERC 1007 (S.D.N.Y., July 13, 1976).

[58] Brief for the Federal Parties at 20 n. 14, 36. *District of Columbia v. Train,* 521 F.2d 971, 987-988 (D.C. Cir. 1975).

[59] *See, e.g., Maryland v. Environmental Protection Agency,* 530 F.2d, 215, 229 (4th Cir. 1975); Brown v. Environmental Protection Agency, 521 F.2d 827, 831-832 (9th Cir. 1975).

programs are authorized by the Clean Air Act can be summarized as follows:

1) Upholding such orders "would not be directly contrary to the requirement in Section 110(c) that the Administrator, and not the states, promulgate the substitute regulations when state submitted plans are found to be inadequate." *Id.* at 987.

2) "[N]owhere in the Act is the Administrator specifically told that he lacks authority to force the states to administer the plan he has promulgated when the plan is directed to a traditional state function such as registering and licensing motor vehicles" *Id.*

3) The language of the Act is "broad enough" to encompass forcing the states to establish bus lanes and purchase bus fleets. *Id.* at 983.[60]

The States will demonstrate that the above reasons cannot survive scrutiny. Moreover, holding that the Administrator may not directly order states to legislate, but may indirectly do so by ordering them to achieve the results specified in the Administrator's regulations, making legislation inevitable, exalts form over substance.

a. All Of The Sections Of The Clean Air Act Must Be Read *In Pari Materia.*

One cannot conclude that the Clean Air Act mandates state enforcement of implementation plans merely because such a concept is not contrary to Section 110(c) of the Act. All of the sections of the Clean Air Act must be read *in pari materia.* By doing so, the structure, language and history of the Act reflect a congressional intent that the role of the federal government is to step in and take over control of air

[60] The case goes on to conclude from the legislative history that Congress intended the states to enforce an inspection and maintenance program.

pollution itself, should the states fail to act. It is submitted, therefore, that the court in *District of Columbia v. Train, supra,* did not go far enough in analyzing the Act by merely finding EPA's approach not in conflict with section 110(c).

b. No Valid Distinction Exists Between Directly Forcing The States To Legislate And Forcing Them To Enforce Federal Regulations Which Require Legislation.

The basis of the Administrator's "distinction", which he borrowed from the opinion of the District of Columbia Court of Appeals, is that ordering the states to enact a particular statute compels them to "fill in the details of the Administrator's regulations", while ordering them to implement federally imposed regulations does not. *Id.* at 987.

This, it is respectfully submitted, makes no sense. Under the Administrator's theory there is nothing, for example, which would prohibit him from announcing an extremely detailed program which a state is then ordered to establish by enacting legislation and regulations. The state would thus be spared the burden of "filling in the details," but this would not lend validity to the Administrator's action, as he concedes. On the other hand, if the Administrator promulgates a vague regulation which the state is required to enforce and under which it must enact auxiliary statutes or regulations to carry out, it would doubtless be necessary for the states to "fill in the details," even though they had not been directly ordered to enact statutes. Carrying out the mandates of federally imposed regulations, then, is just as intrusive into state sovereignty as requiring state legislation to "fill in the details."

The District of Columbia Court of Appeals prefaced the drawing of this distinction with the caveat that

there may "arguably" be a difference and noting that it may be "argued" that the states can be ordered to take action to implement the federally imposed regulations. *Id.* at 987. It appears that the court was not adopting these positions for itself, but merely indicating that such positions can be "argued." While there is nothing offensive in noting that these positions are "arguable," the court never concludes that the argument has merit. Rather, it was assumed that the arguments were meritorious, thus enabling the court to reach the constitutional issues.

This peculiar approach is directly contrary to the canon which that court announced at the beginning of its opinion:

> In keeping with the general policy of federal courts that constitutional questions should be avoided if the case can be decided on statutory grounds, see *Rescue Army v. Municipal Court,* 331 U.S. 549, 568-69, 67 S. Ct. 1409, 91 L. Ed. 1666 (1947), we shall first consider petitioners' claim that the Clean Air Act does not authorize the EPA to require the states to enact laws or administer and enforce implementation plans. *Id.* at 981.

It is unclear why the court did not follow through on its promise to do just that. We urge this Court to do so.

c. The Failure Of The States To Regulate Is Not An "Indirect Source" Of Air Pollution.

Superimposed upon the "distinction" the Administrator perceives between ordering the states to legislate directly and ordering them to do so indirectly is the equally untenable proposition that the States, because they are owners and operators of the public highways, are polluters and may be forced to regulate and abate the pollution of others "like any other owner-operator of a pollution source."[61] In advancing this proposition, the

[61] The States take the view that direct pollution by the state from a stationary source, such as an incinerator, may be the subject of EPA sanction. But it is not pollution of that type which is the subject of this litigation.

Administrator stretches well beyond the breaking point the theory of the District of Columbia of Court of Appeals, analyzed above.

Assuming for the moment that somehow bus purchases and bus lanes, or the lack thereof, are "indirect sources of pollution,"[62] for which the States bear responsibility under the statute, it does not follow that the Administrator may force the States as "polluters" to regulate by requiring them to undertake inspection and maintenance programs. The remedy, if any, would be direct federal regulation of that pollution, rather than a federally announced requirement that the State undertake such regulation.

More fundamentally though, the Court of Appeals' theory, even as to bus purchases and bus lanes, falls of its own weight:

> The streets and highways and bus systems of the states are not being regulated by the Administrator as direct emitters of pollution but rather as factors which influence the use of pollution sources by other parties. We believe that these state-owned transportation systems are analogous to the railroad operated by the state in *United States v. California, supra.* This situation is similar to

[62] Nowhere in the Clean Air Act do the phrases "direct" or "indirect" sources appear, despite the Administrator's repeated reliance on them in his brief, nor is this distinction developed in the regulations promulgated thereunder. The potential for confusion caused by the introduction of this terminology is best illustrated by the disarray on this point found in the Administrator's own brief. At pages 21 through 25 (particularly page 23), the Administrator quotes himself at length and in the space of one paragraph describes roads, freeways and parking facilities first as "direct" and then as "indirect" sources of air pollution. Perpetuating this confusion, at page 29 of his brief, the Administrator now characterizes highways and parking garages as "State-owned indirect sources."

> federal statutes passed in the 1890's requiring the railroads to operate safe trains. *District of Columbia v. Train, supra* at 989.

The puzzling aspect of this reasoning is best identified in an excerpt from *Friends of the Earth v. Carey, supra* n. 57 at 1017 (citizens' suit on remand from Court of Appeals for the Second Circuit to enforce compliance with New York's Metropolitan Transportation Control Plan):

> The [District of Columbia] court's upholding the requirements relating to the construction of bus lanes and purchase of additional buses merits special attention. Clearly, the buses themselves are not being regulated as direct polluters since the addition of buses to the fleet could only mean additional emissions from this source. The bus system would not even appear to be a true indirect source of pollution since it in no way encourages private automobile operation. The logical question that follows is could a private bus company be ordered by the Administrator to purchase additional buses.
>
> It would appear that the bus system must have been seen as a useful tool in discouraging automobile traffic which tool happened to be in the hands of the state. Whether or not such a tool, however useful, is subject to federal regulations which impose affirmative action requirements as opposed to negative restraints is raised here only as an aid to examining New York's TCP.

The major purposes of the states' system of licensing vehicles and operators are safety, revenue collection and identification of vehicles. Nevertheless, the Administrator, through another of his leaps in logic, submits that the states' system of "licensing vehicles and operators" has somehow "encouraged the growth of automobile use to its present levels."[63] Moreover, it is the absence of an inspection and maintenance aspect from that system which is alleged to be particularly

[63] Brief for the Federal Parties at 22.

offensive. Once again, the Administrator is not directing his attention toward pollution-creating activities of states and continues to ignore his announced constraint that "the power asserted by the Administrator is only over the State as polluter, not over the State as a State."[64]

To make his argument more palatable, the Administrator seeks to narrow his classification of the states to include them with any other private owner-operator of a pollution-creating source. He insists that a state may be forced to act only to the extent it is responsible for the pollution and "only when its responsibilities stem, not from the mere failure to regulate private activities, but from its ownership and control of the facilities used in the process of contamination of the air."[65] The Administrator, however, is hard put to explain how forcing the states through their police power to conduct inspection and maintenance programs and to coerce their own citizens to participate in such programs can be rationally linked to their essentially neutral role in owning and operating the roads.

The Administrator's final stratagem is that the states are operating a pollution-creating source "by providing a system of traffic laws."[66] How can traffic laws encourage pollution except under the theory that, in the absence of such laws, citizens would be hesitant to drive automobiles, would leave them at home and would, therefore, cause less pollution?

The major fallacy in all of the Administrator's gyrations is that he seeks to characterize the state as an ordinary operator of an "indirect source" of pollution, but with this as his sole premise, he seeks to force the states to use their police powers as sovereign to regulate

[64] *Id.* at 20.

[65] *Id.*

[66] *Id.* at 22.

the activities of those other than themselves. The Administrator in the retreat described earlier, *see* p. 18, *supra*, now admits that he cannot do this directly.[67] It is submitted that neither can he do this indirectly by stretching his concept of "indirect source" beyond all coherent recognition. If Congress had intended to alter fundamentally our federal system and authorize a federal employee to force the states to exercise their police powers, it would have plainly endeavored to do so. Rather we are asked to extract such an intent from a strained and labyrinthine rationale.

To shore up his extraordinary statutory construction theories, the Administrator relies on several cases. These cases share a common irrelevance: they do not relate to the definition of congressional intent in the Clean Air Act. It does not advance this inquiry one whit to argue that in some other context Congress unequivocally undertook to regulate some arguably "indirect" phenomenon. If any significance can be attached to these cases, it is that in them Congress clearly articulated its intent. Congress must not now be presumed to have attempted to appropriate the police powers of the states by strained inference.

The Administrator first relies, as did the District of Columbia Court of Appeals, on *United States v. California,* 297 U.S. 175 (1936), for the proposition that, just as Congress may require state-owned railroads to comply with federal safety regulations, it may order states to see that private automobiles comply with federal pollution requirements.[68] The problems with this analysis are manifold: 1) the states there were not being asked to regulate the unsafe conduct of others; 2) Congress was not attempting to command the exercise of the states' police power in a particular way; and 3) the congressional intent was unequivocal.

[67] *Id.* at 20, n. 14.

[68] *Id.* at 22; *District of Columbia v. Train, supra* at 989.

The Administrator relies upon *United States v. Northwestern Pac. R. Co.,* 235 Fed. 965 (N.D. Calif., 1916), for the concept that those who provide transportation facilities for use by others may be charged with controlling the manner in which such facilities are used. In that case the court held that a railroad company which owned tracks could be held responsible for unsafe cars being hauled on those tracks, under a statute which forbade railroads from "permitting to be hauled or used on its line any car in violation of" federal safety requirements.[69] Again in that case, 1) Congress spoke plainly and unequivocally; 2) it was not speaking to a state and, therefore, 3) that case did not involve commands that state police powers be used in a particular way. Also relied upon is a statute forbidding airlines from transporting persons unless those persons agree to the conduct of security inspections.[70] For the same reasons stated above, the existence of such a statute leads to no inference relevant to this case.

For identical reasons, *Griggs v. Allegheny County,* 369 U.S. 84 (1962), upon which the Administrator relies, is not relevant to this case.[71] In that case the Court held that airport owners could be held financially accountable for constitutional "takings" caused by noise emanating from airplanes using their facilities. That case does not involve congressional commands that the states exercise their police powers in any particular way, nor did it involve any feats of prestidigitation with congressional intent: in fact, no statute was involved.

Finally, *Illinois v. City of Milwaukee,* 406 U.S. 91 (1972),[72] a nuisance case dealing with municipal sewage discharges, treats only the narrow federal jurisdictional issue and is not on point. It does not relate to an

[69] Brief for the Federal Parties at 25 n. 17.

[70] *Id.*

[71] *Id.* at 25-26.

[72] *Id.* at 26.

inquiry into congressional intent with regard to the Clean Air Act, nor does it even hint at the proposition that Congress, or a court applying the doctrine of nuisance for that matter, can force a state to exercise its police power to regulate the pollution-causing activities of others.

A final problem with the Administrator's "indirect source" argument is that it knows no rational bounds, certainly not those the Administrator has set for it. If, indeed, an "indirect source" is a facility that encourages pollution by serving as an attraction to or convenience for pollution sources, it can be said with equal force that the states may be forced to regulate stationary sources, the siting and construction of which are encouraged by states and their political subdivisions through land use and tax policies, other incentives and, in some instances, through absence of regulations. In constructing his maze, then, the Administrator draws a distinction without a difference between "indirect sources" arising from mobile sources and those arising from stationary sources.

d. There Is Simply No Persuasive Evidence Of Congressional Intent To Invade A Traditional State Function.

Concerning the Administrator's licensing prohibition, the court in *District of Columbia v. Train, supra,* noted that ". . . the specific language of the Act suggests that Congress did not confer such authority any more than it intended that the states would be ordered to adopt statutes." *Id.* at 987. The court continued however:

> On the other hand, nowhere in the Act is the Administrator specifically told that he lacks authority to force the states to administer the plans he has promulgated when the plan is directed to a traditional state function such as registering and licensing motor vehicles. *Id.*

> The court reasoned that where the Administrator invades a traditional state function, in the absence of a specific prohibition, there is a presumption that Congress intended that invasion. Actually, the presumption, carefully developed by this Court, is just the opposite, namely that, in the absence of a clear congressional intent to preempt state prerogatives, the action by the state is not to be regarded as inconsistent with an act of Congress, and the reserved power of the state is thus to be preserved.

Any presumption of congressional intent to regulate state activities, such as that asserted by the Administrator, contravenes the traditional application of the Supremacy Clause in areas of potential federal-state conflicts. As was stated long ago by this Court, in *Missouri, Kansas & Texas Ry. v. Haber,* 169 U.S. 613, 623 (1898):

> . . . [It is the] settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together.

The Court has more recently restated and reaffirmed this precept in *Florida Lime and Avocado Growers v. Paul,* 373 U.S. 132, 142 (1963):

> The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.

See also, Head v. New Mexico Board, 374 U.S. 424, 430 (1963).

The statutes and regulations before the Court here fail to meet either of the *Florida Lime* tests. First, the

state activities in question are not in conflict with the enforcement of a federal statute or regulation. When a state registers a vehicle, such an act indicates no more than compliance of that vehicle with specified state requirements, typically concerning ownership, taxes, and safety. It does not permit operation of a vehicle in violation of federal requirements. Accordingly, there is no conflict, inasmuch as the operator must comply with both federal and state law. Second, as the Court acknowledged in *District of Columbia v. Train, supra* at 987, the Clean Air Act contains no unmistakable expression that state registration laws are preempted or otherwise void unless they apply the federal inspection standards.

The presumption in question is particularly well established when the regulated activity lies within the domain of traditional state police power. This Court has said:

> The settled mandate governing this inquiry, in deference to the fact that a state regulation of this kind is an exercise of the 'historic police powers of the States,' is not to decree such a federal displacement 'unless that was the clear and manifest purpose of Congress.' *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230.

Florida Lime and Avocado Growers, Inc. v. Paul, supra at 146.

In applying the presumption specifically to the Commerce Clause this Court has stated:

> As a matter of statutory construction Congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. This is especially the case when public safety and health are concerned. *Kelly v. Washington,* 302 U.S. 1, 10-14; *H.P. Welch v. New Hampshire,* 306 U.S. 79, 85 and cases cited.

Maurer v. Hamilton, 309 U.S. 598, 614 (1940).[73]

Finally, and most specifically, this Court has recognized that the states' exercise of the police power to control their streets and highways, including the registration of vehicles, falls squarely within the accepted doctrine.

> In [*Hines v. Davidowitz,* 312 U.S. 52], a federal system of alien registration was held to supersede a state system of registration. But there we were dealing with a problem which had an impact on the general field of foreign relations. The delicacy of the issues which were posed alone raised grave questions as to the propriety of allowing a state system of regulation to function alongside of a federal system. In that field any 'concurrent state power that may exist is restricted to the narrowest of limits.' p. 68. Therefore, we were more ready to conclude that a federal Act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally *local matters* as public safety and order and the *use of streets and highways. Maurer v. Hamilton, supra,* . . . We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard.

Allen-Bradley Local v. Board, 315 U.S. 740, 749 (1942) (emphasis added).

Thus, state regulatory activities, especially those traditionally of concern to the states, are not deemed to be superseded by federal law, absent some clear and unmistakable evidence. For when Congress intends to

[73] Likewise in *Hancock v. Train, supra* n. 57 at p. 35, a state was suing to compel a federal facility to comply with the terms of the state's implementation plan. This Court refused to bind the federal facilities to the procedural elements of the plan in the absence of Congress having expressed "with satisfactory clarity" an intention to bind the United States.

intrude upon state regulatory authority it knows how to do so. For example, section 116 of the Act[74] states, in part:

> [T]hat if an emission standard limitation is in effect under an applicable implementation plan . . . such state or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard of limitation made under such plan . . .

The states' longstanding regulation of motor vehicles and their licensing should not be subject to the imposition of a conflicting federal regulation in the absence of clear congressional intention to override state regulatory activities. Recognition of the states as repositories of all powers not surrendered to the federal government is consonant with the prior decisions of the Court and, therefore, compels the conclusion that the presumption of undiminished state regulatory power should be applied in this case.

Congress has traditionally recognized the presumption of validity of state regulations by seeking to reconcile federal-state conflicts rather than to exacerbate them.

In *Maryland v. Environmental Protection Agency, supra* at 228, the Court of Appeals for the Fourth Circuit referred to the typical congressional enactment, which has as its purpose the replacement of a state program by a federal one, as the "alternative whip of economic pressure and seductive favor." This concept has also been commonly referred to as the "carrot-and-stick" approach. Examples of this method of legislation are legion, and the Fourth Circuit summarized well Congress' use of this economic inducement approach in the following illustrative situations: the withholding of federal funds for a state's failure to comply with the Hatch Act or the Highway Beautification Act; the

[74] 42 U.S.C. 1857d-1.

withholding of federal project approval for failure to adopt a 55 m.p.h. speed limit or failure to follow federal standards under the Occupational Safety and Health Act. *Id.*

When legislating in an area in which the states are known to have prominent regulatory programs in place, traditionally Congress has been loathe to intervene and to federalize the area entirely. Instead, it has used economic incentives to achieve those purposes. Consequently, presumption of an intent to override a state program, particularly in an area of traditional state police power activity such as motor vehicle registration, is wholly inconsistent with the historical approach of Congress.

D. The Legislative History Of The 1970 Amendments Is Devoid Of Congressional Intent To Force The States To Adopt Statutes Or To Administer And Enforce Implementation Plans.

As previously submitted, Congress has never contemplated authorizing federal officials to require the states to exercise their police powers in a particular manner. Bearing in mind that the Clean Air Act imposes both civil and criminal sanctions on violators, it is inconceivable that such a novel and radical assumption of power by a federal official could have been intended through any abstract interpretation of the Clean Air Act.

One searches the legislative history of the Clean Air Act in vain for even the most oblique mention of jail, injunctions or fines to be visited upon state governors, legislators, or agency officials, or any other punitive actions being taken against a state for failure to carry out the dictates of the Administrator. The only mention of the failure of the states to follow the Administrator's directions is in the context of the Administrator himself assuming the enforcement of his plan. The legislative history is, thus, entirely consistent with the structure

and language of the Act, as analyzed above. The Administrator has failed to produce any support in this history for his broad assertion of power over state activities.[75] As the Ninth Circuit Court of Appeals stated in *Brown v. Environmental Protection Agency*, *supra* at 834:

> A diligent search of the sections of the Clean Air Act fails to reveal a single instance in which Congress explicitly has vested in the Administrator power to compel the states to administer and enforce regulations promulgated by him designed to govern polluters, potential or actual, other than the state, municipality, or political subdivision of the state. Counsel for the Administrator also have been unable to guide us to such a provision . . . .

All that the Administrator puts forth in his brief with respect to the legislative history of the 1970 Act is one part of a paragraph citing references which are not particularly helpful to either this Court or to his cause. Furthermore, the more expansive footnote to that part adds nothing but obfuscation to the issues under discussion.[76]

The Administrator then turns the clock forward four years to rely on what he characterizes as "subsequent" legislative history supporting a congressional intent to coerce the states to do the Administrator's bidding, yet his examples manifest no such intent. First, the Administrator argues that "Congress has acted to bar promulgation of particular transportation control measures; but the general strategy of requiring States to implement such measures, where necessary, was left unaltered."[77] This argument begs the question, assum-

[75] Excerpts from the legislative history of the Clean Air Act which illustrate that Congress never considered coercing the States to enact laws and regulations and to enforce federal programs are set forth in Appendix C *infra*.

[76] Brief for the Federal Parties at 32-33 n. 26.

[77] *Id.* at 33-34.

ing as it does that Congress intended to mandate a "general strategy of requiring States to implement such measures" which it declined to change. Moreover, the sole example given is restrictions Congress placed in the 1974 Act on the Administrator's power to impose parking surcharges and limitations.[78] The states were not involved in this program. This was not an area where Congress could have been expected to address itself to the issue of state coercion or would approve coercion by its silence. The Administrator points to an amendment reserving to the states the right to impose parking restrictions, but, far from supporting the Administrator's view, this merely manifests Congress' traditional policy of *not* interfering with the exercise of the police powers of the states.

Finally, the Administrator seeks refuge in the deletion, in conference committee, of a provision in an amendment which would have prohibited the Administrator from establishing bus/carpool lanes. The Committee is quoted to the effect that the deletion "would therefore continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency . . ."[79] Although there is reference to the statutory language discussed above, to the effect that "the basic responsibility rests with State and local governments," there is no language supporting the power of the Administrator to force the states to act, as opposed to establishing such bus/carpool lanes himself in instances where the states fail to discharge their "primary responsibility." The committee avoided direct confrontation on this score with the statement that "the conferees do not intend to question . . . the authority of the Administrator of the Environmental Protection Agency to impose, [sic] transportation control plans."[80]

[78] *Id.* at 34.

[79] *Id.* at 35.

[80] *Id.* at 36.

E. The Status Of The District Of Columbia Under The Clean Air Act.

For purposes of the Clean Air Amendments of 1970 the District of Columbia is treated as a state.[81] However, the legal relationship between the federal government and the District of Columbia differs sharply from that of the federal government and the fifty states. *Palmore v. United States,* 411 U.S. 389 (1973). Article I, Section 8, Clause 17 of the Constitution grants exclusive and plenary legislative authority to Congress over the territory that became the District of Columbia.

The legislative authority of Congress over the District of Columbia includes all legislative powers which a state may exercise over its own affairs. *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100 (1953). The legislative authority of Congress over the District of Columbia also includes its national legislative powers under the Constitution which are not shared by the fifty state legislatures. For example, Congress may enact legislation for the District of Columbia which includes the regulation of commerce among the several states whereas state legislatures have very limited legislative powers to regulate commerce. *Neild v. District of Columbia,* 110 F.2d 246 (D.C. Cir. 1940).

Congress also has the power to delegate portions of its legislative authority over the District. It has exercised that authority over the District by making the District a body corporate for municipal purposes by law, Section 1-102, D.C. Code, 1973 ed., and has delegated portions of its legislative authority over the District to legislative bodies in the District. The delegation of legislative authority by Congress to the Legislative Assembly of the District over "rightful subjects of legislation"[82] was as broad as the traditional

[81] 42 U.S.C. 1857h(d); Clean Air Act §302 (d).

[82] Organic Act of 1871, Act of February 21, 1871, Section 1 *et seq.*, 16 Stat. 419.

police power of a state. *District of Columbia v. John R. Thompson Co., supra.*

Congress has delegated regulatory authority to the Government of the District "to protect and enhance the quality of the District of Columbia's air resources." Section 6-811 D.C. Code, 1973 ed. That Congress was mindful of existing federal air pollution legislation at the time of this delegation is evident since it specifically cited portions of that legislation in the vehicle of delegation, the District of Columbia Air Pollution Control Act of 1968. Section 6-812(a)(4), D.C. Code, 1973 ed. However, within that delegation, the Congress did not also delegate legislative authority over this subject in the District to the Administrator of the Environmental Protection Agency or to any other federal agency. It only required that regulations adopted by the District in the exercise of this delegation be at least as stringent as recommendations already made by the Secretary of Health, Education and Welfare, the predecessor of the Administrator. Section 6-812(a)(2), D.C. Code, 1973 ed.

Congress, in constructing a legislative program for air pollution abatement, has not sought to delegate any portion of its legislative authority over the District by delegating portions of that authority to any federal agency or administrator. When Congress undertook its most recent revision of its delegation of legislative authority over the District in the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774, it did not delegate portions of that legislative authority to any federal agency or administrator nor did it qualify its delegation therein to the new District of Columbia Council so as to require review of Council actions by any federal agency, reserving that role for itself.

Thus, when it is said that the District is treated as a state for Clean Air Act purposes, it is essential to recognize that whether the District is a "state" or "state

or territory" within the meaning of any particular statutory or constitutional provision depends on the character and aim of the specific provision involved. *District of Columbia v. Carter,* 410 U.S. 418, *reh. den.,* 410 U.S. 959 (1973).

For purposes of the Clean Air Act and the D.C. Air Pollution Control Act of 1968, the Congress has delegated some regulatory authority and legislative authority to the District Government and has reserved the balance of that authority to itself just as the states have given limited legislative powers to the United States and have reserved the balance of those powers to themselves and to the people in the Tenth Amendment. Congress has made no delegation of its legislative jurisdiction over the air resources of the District of Columbia to the Administrator of the Environmental Protection Agency. By analogy with the reasoning of the Court in *Palmore v. United States, supra,* we may assume that Congress legislated with care, and that had it intended to delegate to the Administrator of the Environmental Protection Agency the authority to order the adoption of certain laws by the Council of the District of Columbia, it would have specifically done so, and not left so important a matter to implication. Consequently, any attempt by the Administrator to exercise such legislative authority or to *require* that actions be taken by the District of Columbia Council is clearly unlawful.

III.

THE ADMINISTRATOR LACKS THE POWER UNDER THE CONSTITUTION OF THE UNITED STATES TO REQUIRE THE STATES TO ENACT LAWS AND ISSUE REGULATIONS ESTABLISHING AIR POLLUTION CONTROL PROGRAMS.

The Administrator's regulations ordering the states to enact legislation and regulations establishing air pollution control programs and to fund and enforce

those programs stand as an unprecedented exercise of federal power. During the entire course of our constitutional history, no act of Congress or order of a federal executive officer has sought to coerce the states to exercise those essential sovereign powers under threat of civil and criminal sanctions.[83] The Administrator finds no support in the logic and structure of the Constitution, in history or in any decision of this Court for the entirely novel constitutional theories on which rests his assertion of the power to conscript the legislative and executive powers of the States.

A. A State's Exercise Of Its Governmental Powers Is Not Commerce Or An Activity Affecting Commerce Subject To Federal Regulation Under The Commerce Clause.

Since Chief Justice Marshall's seminal decision in *Gibbons v. Ogden,* 22 U.S. (9 Wheat.) 1 (1824), this Court has given broad recognition to the "embracing and penetrating"[84] power of Congress to regulate both private and state governmental activities that affect interstate commerce. However, the decisions of this Court have always recognized a limitation on that power imposed by the very words of the Commerce

[83] Indeed, the States have discovered only two instances in which similar exercise of power was even contemplated by the federal government. The drafters of the Emergency Price Control Act of 1942 considered requiring the state courts to enforce the criminal provisions of that Act, but the constitutionality of the proposal was considered to be so doubtful that it was dropped. Hart and Wechsler, *The Federal Courts and the Federal System* 437 (Rev. ed. 1973). The Federal No-Fault Automobile Insurance Act, S. 354, 93d Congress, would have required state officials to act under and administer a federal program. Attorney General Levi expressed the view that such coercion would be unconstitutional. See p. 66 *infra.* *See* Salmon, *The Federalist Principle: The Interaction of the Commerce Clause and the Tenth Amendment in the Clean Air Act, 2 Colum. J. of Env. Law* 290, 295 n. 23, 327-341 (1976).

[84] *Wickard v. Filburn,* 317 U.S. 111, 120 (1942).

Clause itself. Mr. Chief Justice Hughes defined that limitation as follows:

> The subject of the federal power is still 'commerce' and not all commerce but commerce with foreign nations and among the several States. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains.

Santa Cruz Fruit Packing Company v. NLRB, 303 U.S. 453, 466 (1938).

This Court must, of course, make the ultimate determination that a particular activity being subjected to federal regulation is commerce, or has a substantial effect on commerce in the constitutional sense.

The subject matter limitation on federal power under the Commerce Clause poses a particularly difficult problem for the Administrator in this case. He has determined that the direct federal development, implementation, and enforcement of transportation control strategies is expensive, impractical and inefficient. Consequently, he has ordered the States to undertake those actions, and his regulations operate directly and deliberately on the State's governmental powers to make and enforce laws and regulations.

For this Court to sustain his regulations, the Administrator must establish that the activities which he seeks to regulate are commerce or that they affect commerce in the constitutional sense. Yet he acknowledges,[85] as indeed he must, that "the power of the states over commerce has no more been recognized as commerce than has the power of Congress which is derived from the Commerce Clause." *Brown v. Environmental Protection Agency, supra* at 839. To escape this dilemma, the Administrator relies on what he terms a fundamental principle, namely that the States' owner-

[85] Brief for the Federal Parties at 19.

ship and operation of the roads is a "pollution creating activity" affecting commerce and thus is a proper subject of federal regulation.

For reasons that have already been discussed at some length in this brief,[86] the Administrator's "fundamental principle" is in reality no more than an empty fiction. It represents a thinly veiled attempt to alter the constitutional nature of the activities he seeks to regulate by changing the words he uses to describe those activities. In fact, the States own and operate the public highways only by exercising their governmental powers, and, as the Administrator himself has recognized, by "the regulatory, taxing and investment decisions made at all levels of government."[87] The Administrator concedes though that those uniquely governmental decisions are not subject to the federal commerce power. His argument collapses from internal contradictions the moment he states it.

The particular state activities which the Administrator alleges to be pollution-causing are the ownership and operation of public highways. The term "operation", as used by the Administrator, apparently includes the licensing of vehicles, the enactment of traffic laws, and the creation and maintenance of a "transportation system" which has encouraged the use of "single-passenger automobiles", instead of mass transit.[88] Stripped of its disguises, the Administrator's position is that the failure of the States to enact and enforce laws and regulations to reduce air pollution from privately owned motor vehicles is the "pollution creating activity" subject to federal regulation. He finds no support whatsoever in any decision of this Court for the proposition that failure of a state to exercise its

[86] *See* Argument II C, pp. 38-44 *supra*.

[87] 38 Fed. Reg. 30632 (November 6, 1973); Brief for the Federal Parties at 21.

[88] Brief for the Federal Parties at 22.

police power is an activity "affecting commerce" within the meaning of the Constitution. To the contrary, the reasoning of this Court in all of the cases involving Congress' regulation of state activities lends no support to the Administrator's position.

On several occasions this Court has upheld the power of Congress under the Commerce Clause to regulate certain state activities.[89] The common denominator of all of those cases is that the state activity subject to direct regulation was identical to economic activity carried on by private persons or enterprises.

Maryland v. Wirtz, 392 U.S. 183 (1968), stands as the highwater mark of this Court's recognition of congressional power to regulate state activities under the Commerce Clause. Although this Court overruled "the far-reaching implications" of *Wirtz* last term in *National League of Cities v. Usery*, 96 S. Ct. 2465 (1976), it should be noted that even the expansive view of congressional power over state activities expressed in *Wirtz* quite clearly did not embrace the notion that the exercise of legislative and executive powers by the

[89] *Board of Trustees v. United States*, 289 U.S. 48 (1933) (a state university can be required to pay the federal duty on imported scientific equipment); *United States v. California*, 297 U.S. 175 (1936) and *Parden v. Terminal Railway Company*, 377 U.S. 184 (1964) (upholding, respectively, the application of the Federal Safety Appliance Act and the Federal Employers Liability Act to state-owned railroads); *United States v. Ohio*, 385 U.S. 9 (1966) (reversing *per curiam*, citing *Wickard v. Filburn*, 317 U.S. 111 (1942), a decision of the Court of Appeals for the Sixth Circuit holding that farms operated by Ohio's mental and penal institutions were not subject to the acreage limitations imposed on private farms by the Agricultural Adjustment Act); *Maryland v. Wirtz*, 392 U.S. 183 (1968) (upholding the 1961 amendments to the Fair Labor Standards Act extending the minimum wage and maximum hour provisions of that Act to employees of state operated institutions and schools); *Fry v. United States*, 421 U.S. 542 (1975) (holding that state employees were subject to wage and salary controls imposed by the Economic Stabilization Act of 1970).

states, or their failure to exercise those powers, is commerce or an activity affecting commerce subject to regulation under the Commerce Clause. Justice Harlan's opinion for the majority carefully marked out the limits imposed by the words of the Commerce Clause itself. He expressly rejected the dissenting opinion's suggestion that Congress could find that all state activities, such as the state budgeting process, affect commerce and were subject to federal control under the commerce power. 392 U.S. at 196 n. 27. He further stated that:

> . . . while the commerce power has limits, valid regulations of commerce do not cease to be regulations of commerce because a State is involved. If a State is engaged in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulation. . . . [This court] will not carve up the commerce power to protect enterprises indistinguishable in their effect on commerce from private businesses simply because the enterprises happen to be run by the States for the benefit of their citizens. *Id.* at 196-99.

Wirtz thus recognized that commerce and activities affecting commerce to which Congress can address its power are limited to those activities which can be engaged in by both state-owned enterprises and privately owned enterprises or private individuals. If private enterprises cannot engage in a particular kind of activity, or conversely, if a particular activity is uniquely governmental, it is not commerce in the constitutional sense.

The decisions of this Court dealing with the implied immunity of the states from taxation by the federal government support the proposition that activities which are uniquely governmental in nature are not subject to regulation under the Commerce Clause. Although the exact scope of the state's immunity from

federal taxation has at times provoked disagreement among members of this Court, even those members who have formulated the immunity in the most narrow terms have agreed that state activities which are exclusively governmental in nature cannot be taxed by the federal government. For example, in *New York v. United States,* 326 U.S. 572 (1946), the Court held that New York's sale of mineral water was not immune from federal taxation. Justice Frankfurter's opinion, joined in by Justice Rutledge, described this most restrictive interpretation of the states' immunity as follows:

> There are, of course, State activities and State owned property that partake of uniqueness from the point of view of intergovernmental relations. These inherently constitute a class by themselves. Only a State can own a Statehouse; only a State can get income by taxing. These could not be included for purposes of federal taxation in any abstract category of taxpayers without taxing the State as a State. But so long as Congress generally taps a source of revenue by whomsoever earned *and not uniquely capable of being earned only by a State,* the Constitution of the United States does not forfeit it merely because its incidence falls also on a State. *Id.* at 582 (emphasis added).

The activities that are the subject of the Administrator's regulations in this case are uniquely governmental in nature. Only governments own and operate public highways[90] and they do so only by exercising governmental powers. Only governments enact laws, appropriate public funds, adopt regulations, and enforce laws to regulate the activities of private citizens. There is simply no counterpart to those activities in the private

[90] *See generally, South Carolina v. Barnwell,* 303 U.S. 177 (1938); *Morris v. Duby,* 274 U.S. 135 (1927); *California v. Central Pacific Railroad Company,* 127 U.S. 1, 40 (1888) ("No private person can establish a public highway"). *Barnes v. District of Columbia,* 91 U.S. 540 (1876); *Pennsylvania v. Environmental Protection Agency,* 500 F.2d 246, 262 (3d Cir. 1974).

sector. "Certainly the paradigm of sovereign action — action qua state — is the enactment and enforcement of state laws." *National League of Cities v. Usery, supra* at 2485 (Brennan, J., dissenting). Thus, those activities are not commerce or activities affecting commerce subject to regulation by the federal government under the Commerce Clause.

A constitutional definition of commerce or activity affecting commerce must be in consonance, not with some abstract metaphysics of causation and effect, but with the fundamental purposes of the Constitution and the structure of our federal system. The Administrator's central thesis, that state governmental policy decisions with respect to public highways and the failure of the States to exercise their governmental powers in the prescribed manner constitute burdens on interstate commerce, runs counter to both the history and the structure of the Constitution. The Constitution contemplates that the federal government will have the power to regulate interstate commerce, not by distorting the meaning of that term to include the governmental powers of the states, but by acting directly on individuals, by preempting state action where it conflicts with the federal purposes and by conditioning state regulation on compliance with federal requirements.

B. The Administrator's Regulations Interfere With Governmental Functions That Are Essential To The Separate And Independent Existence Of The States, And Thus His Regulations Violate State Sovereignty Protected By The Constitution Of The United States.

In *National League of Cities v. Usery, supra,* this Court held that the states' power to determine the wages and hours of their employees was a "function essential to separate and independent existence," 96 S. Ct. at 2471, and it declared invalid the minimum wages

and maximum hours provision of the Fair Labor Standards Act as applied to the states because those provisions "directly displaced the states' freedom to structure integral operations in areas of traditional governmental functions." *Id.* at 2474. The Administrator's regulations at issue in this case represent a much more serious interference with integral governmental functions than did the federal legislation before the Court in *National League of Cities*. By commanding the states to exercise their legislative and executive powers and to exercise them in a particular manner, the Administrator's regulations displace not only important state policy decisions but also the essential processes of state government.

The initial decision to establish a particular program, such as an emission inspection and maintenance program or a program to provide additional public transportation facilities, is the essence of independent government. No attribute of sovereignty is more fundamental to the states' integrity and to their "ability to function effectively within a federal system." *Fry v. United States*, 421 U.S. 542, 547 (1975).[91]

Even under the provisions of the Fair Labor Standards Act Amendments declared invalid in *National League of Cities*, the states retained at least an element of choice. That Act required the states to pay their employees certain wages, and faced with that requirement the states made policy decisions concerning the delivery of governmental services that they otherwise might not have made. But the states still had the power to decide to hire or not to hire additional employees or to let their employees work overtime. In contrast, under the Administrator's regulations, the states are deprived of all choice. Instead, they must establish the program

[91] *See also*, Note, *Municipal Bankruptcy, the Tenth Amendment and the New Federalism*, 89 Harv. L. Rev. 1871, 1871-91 (1976).

and enforce it or be severely penalized. They cannot adopt the "'simple expedient' of not yielding." *Oklahoma v. United States Civil Service Commission*, 330 U.S. 107, 143 (1947).

The Administrator devotes his entire argument in support of his regulations to attempting to minimize their impact upon the states. He argues first that his transportation control strategies are narrowly drawn to affect only one aspect of the states' activities, their ownership and operation of the public highways and their transportation policies. Like most of the Administrator's arguments in this case, it is entirely an argument of convenience, conceived at the last possible moment and directly contrary to earlier positions. For example, in his general preamble to transportation control plans promulgated on July 24, 1973,[92] the Administrator characterized the task imposed on the states in very different terms. He commented:

> In requiring the State and EPA to impose transportation controls where they are needed to meet air quality standards, the Congress imposed a regulatory task whose difficulty and complexity are virtually unparalleled. (A. at 423).

Furthermore, this Court's reasoning in *National League of Cities* in no way suggests that only those exercises of Congress' power which affect *all* state governmental activities will constitute an unconstitutional intrusion into state sovereignty. If the Court had viewed a pervasive federal intrusion into and across the entire range of state functions as a prerequisite to a violation of state sovereignty, then *Maryland v. Wirtz, supra*, which involved application of the Fair Labor Standards Act to school and hospital employees, could have been limited to its facts. Instead *National League of Cities* overruled *Maryland v. Wirtz*, and the Court was careful to note that, with respect to specific state

[92] 38 Fed. Reg. 20769 (A. 406).

services, "each provides an integral portion of those governmental services which the States and their political subdivisions have traditionally afforded their citizens." 96 S. Ct. at 2476. Finally, and most importantly, the underlying principle of *National League of Cities* is that with respect to traditional state governmental functions, the states retain the power to make basic policy decisions. If federal intrusion into all aspects of state government were required before Congress' power could be checked, then state sovereignty could simply be chipped away piece by piece.

The Administrator also emphasizes repeatedly that under the Clean Air Act the states have the first opportunity to specify the methods by which they will attain the ambient air quality standards. That argument, however, demonstrates the Administrator's failure to comprehend the principles underlying our federal system of government with which this Court was concerned in *National League of Cities*. Under the Administrator's regulations, the states only have options within the parameters of a federally dictated policy aimed at a particular problem. However, state governments, like the federal government, are faced with a myriad of difficult problems with respect to essential governmental functions, and they must make important policy decisions concerning how to allocate limited financial and human resources to deal with all of those problems. *National League of Cities* holds that Congress cannot exercise its powers under the Commerce Clause in attempting to solve one problem in such a way as to directly displace the states' ability to set their own priorities and make their own policy judgments with respect to the delivery of government services.

Contrary to the Administrator's representations to this Court, his transportation control strategies will impose substantial financial burdens on the States. For

example, a regular size forty-foot air conditioned bus now costs WMATA $72,000. The total cost of purchasing the 475 additional buses required by the Administrator's regulations would be over $34 million. In addition, the States and their political subdivisions will be required to appropriate funds to cover the inevitable operating deficits.

The Administrator's inspection and maintenance regulations will also require the States to engage in additional law enforcement functions. For example, those regulations require the States to conduct spot checks to ensure that the owners have not modified their motor vehicles so as not to comply with emission standards. Thus the States will be forced either to hire new enforcement personnel or to shift personnel assigned to enforce other state programs. Yet it is exactly that sort of relinquishment of policies with respect to governmental functions such as law enforcement that this Court held in *National League of Cities* to be beyond the power of Congress under the Commerce Clause.

The Administrator argues that his regulations are less intrusive than the alternative of having federal authorities themselves operate buses and inspect private vehicles. The Administrator again misunderstands the difference between physical intrusion and intrusion into the proper role of the states in our federal system. The presence of federal inspectors and bus operators would not be an institutional intrusion into the state role any more than federal post offices or FBI agents, all of which are present in the States. The States agree with the Attorney General of the United States who testified in response to a similar argument by Senator Moss at the hearings on the Federal No-Fault Insurance Act.

> But, Senator, assuming, as I do, the desire to do good in this area, of course, I think it is an

> insidious point to say that there is more federalism by compelling a State instrumentality to work for the Federal Government.
>
> That is a very enticing argument, it makes it easier for the Federal Government to encroach, it makes it easier to wipe out the sovereignty of the separate states.[93]

C. The History Of The Constitutional Convention Of 1787 Demonstrates That The Framers Of The Constitution Did Not Intend That The Federal Government Should Have The Power To Require The States To Enact Legislation Or To Administer And Enforce Federally Mandated Programs.

The regulations at issue in this case represent an attempt by the Administrator to appropriate by coercion the governmental powers of the states to solve a national problem. In the Administrator's own words, the regulations were promulgated "to provide the necessary assurance that state and local action would be forthcoming." 38 Fed. Reg. 30633 (November 6, 1973).

The States submit however that the framers of the Constitution emphatically rejected a system of government in which the central government had the power to act through the states to achieve its ends. Thus, the means chosen by the Administrator to solve the national problem of air pollution violates the entire spirit and purpose of the framers' efforts.

The crucial decision of the Constitutional Convention of 1787 was the decision to establish a central government having the power to act directly upon individuals and not merely upon the states. The purpose of that determination was to correct the major weakness of the Union under the Articles of Confederation, the lack of effective power in Congress. Under the

[93] Hearings on S. 354 before the Senate Committee on Commerce, 94th Cong., 1st Sess., Ser. 94-20, 496 at 503 cited in Salmon, *supra* n. 83 at 341.

Articles of Confederation, the Union was a league of states. It received its authority from the States and its laws were directed to the states. To the extent that Congress desired to regulate the affairs of individual citizens, it could only do so through the agency of the states. Although the states were bound in theory to comply with the laws of Congress, in fact they refused to do so, and Congress lacked the power to compel obedience.[94]

Alexander Hamilton described this fundamental structural flaw in the Articles of Confederation as follows:

> The great and radical vice in the construction of the existing Confederation is in the principle of legislation for states or governments, in their corporate or collective capacities, and as contradistinguished from the individuals of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequences of this is, that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations, which the states observe or disregard at their option.[95]

James Madison and other delegates who convened in Philadelphia in May 1787 believed that the central government must have more power. Writing to Thomas

[94] *See generally*, Charles Warren, *The Making of The Constitution* 3-54 (1937 ed.).

[95] *The Federalist No. 15* at 93 (Cooke ed. 1961). *See also*, Madison, *Letters and Other Writings* 34 (Worthington ed. 1884).

Jefferson shortly before the Convention began, Madison indicated that he sought to achieve an increase in the power of Congress that would "render it efficient without the intervention of the Legislatures."[96]

Shortly before the Convention began, the Virginia delegation drafted a series of fifteen resolutions (the Virginia Plan) to provide a basic framework for consideration, and Governor Randolph opened the main business of the convention by introducing the Virginia Plan. The Sixth Resolution provided:

> 6. Resolved, that each branch ought to possess the right of originating acts; that the National Legislature ought to be impowered to enjoy the Legislative Rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation; *to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the Articles thereof* (emphasis added).[97]

The fate of two of the clauses in the Sixth Resolution have a direct bearing on the constitutional issues presented to the Court by the Administrator's regulations. The last clause, authorizing the use of force by the national government against a delinquent state, was addressed only by Madison. His comments are significant:

> Mr. Madison observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it, when

[96] Madison, *Letters and Other Writings* 284 (Worthington ed. 1884).

[97] 1 Farrand, *The Records of The Federal Convention* 20-23 (Rev. ed. 1937).

> applied to people collectively, and not individually. A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against a state would look more like a declaration of war then an infliction of punishment; and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary and moved that the clause be postponed. This motion was agreed to *nem. con.*[98]

The third clause of the Sixth Resolution, which provided for a legislative negative endowing the national government with the power to veto state laws, also suffered defeat but only after protracted debate. The crux of the controversy was whether the power of the federal courts to declare state laws unconstitutional, a power which was for the most part unquestioned by the Convention,[99] served as a sufficient check on the power of the states. In the end, the issue was settled by the Convention's acceptance of the Supremacy Clause, coupled with the power of the judiciary to review state laws on constitutional grounds, as an effective substitute for the legislative negative.[100]

Not long after the Convention adjourned, Madison wrote to Jefferson describing what he thought was the essential "ground work" on which the proposed Constitution rested.

> "It was generally agreed that the objects of the Union could not be secured by any system found on the principle of a Confederation of Sovereign

[98] Madison, *Journal of The Constitutional Convention* 62 (Scott ed. 1893).

[99] *See generally,* Beard, *The Supreme Court and the Constitution* (1912); Hart and Wechsler, *The Federal Courts and the Federal System* 9 (Rev. ed. 1973).

[100] *See generally,* Farrand, *supra* n. 97 at 27-28; Warren, *supra* n. 94 at 16-17.

States. A voluntary observance of the federal law by all the members could never be hoped for. A compulsive one could evidently never be reduced to practice, and if it could, involved equal calamities to both the innocent and the guilty, the necessity of military force, both obnoxious and dangerous, and, in general, a scene resembling much more a civil war than the administration of a regular government.

Hence, was embraced the alternative of a government which, instead of operating on the states should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.[101]

Hamilton argued the case for the adoption of the Constitution in similar terms in *The Federalist*. After presenting the need for a federal government having the power to act directly on individual citizens. Hamilton wrote:

To this reasoning it may perhaps be objected, that if any State should be disaffected to the authority of the Union, it could at any time obstruct the execution of its laws, and bring the matter to the same issue of force, with the necessity of which the opposite scheme is reproached.

The plausibility of this objection will vanish the moment we advert to the essential difference between a mere noncompliance and a direct and active resistance. If the interposition of the State legislature be necessary to give effect to a measure of the Union, they have only not to act or to act evasively, and the measure is defeated. This neglect of duty may be disguised under affected but unsubstantial provisions, so as not to appear, and of course not to excite any alarm in the people for the safety of the Constitution. The State leaders may even make a merit of their surreptitious invasions of it, on the ground of some temporary convenience, exemption, or advantage.

[101] Madison, *supra* n. 95 at 344.

But if the execution of the laws of the national government, should not require the intervention of the state legislature; if they were to pass into immediate operation upon the citizens themselves, the particular governments could not interrupt their progress without an open and violent exertion of an unconstitutional power. No omissions nor evasions would answer the end. They would be obliged to act, and in such a manner, as would leave no doubt that they had encroached on the national rights. . . .[102]

The framers' unequivocal rejection of a constitutional structure in which the central government possessed the power to force the states to enact and enforce laws to carry out its purposes emerges with undisputable clarity from the history of the Constitutional Convention and the ratification process. Faced with a compelling need to strengthen the central government, the framers briefly contemplated and emphatically rejected a solution granting the central government power to exercise coercive power directly against state governments. They rejected that alternative because they foresaw its potential for disrupting the relationship between the states and the federal government. For similar reasons, they declined to give Congress the power to nullify state laws.

Instead, the framers adopted a system in which the states retain broad governmental powers to act with respect to all subjects except those expressly prohibited in Article I, Section 10 of the Constitution. They clearly intended that the states retain the right to determine how and when to exercise their governmental powers free from any direct coercion by the federal government. To protect the primacy of federal law in the case of a conflict arising from the exercise of concurrent powers by the states and the federal government, the framers determined to rely on the Supremacy Clause and the

[102] *The Federalist No. 16* at 102 (Cooke ed. 1961).

judicial power to declare state laws invalid. They saw that there was a great difference between a constitutional structure in which the central government has the power to directly control, either by veto or affirmative command, the power of the states to legislate and exercise their governmental powers, and a constitutional structure which provides for the principle of federal supremacy and a mechanism for resolving actual conflicts of power. The Administrator's assertion of the power to require the states to enact and enforce laws and regulations ignores that fundamental structural difference.

The Administrator's regulations requiring the States to adopt, implement and enforce an inspection and maintenance program present a paradigm of that "great and radical vice" that the framers sought to avoid. Those regulations interpose the legislative and executive branches of the state governments between the federal government and solutions to the problem of air pollution. If the States are delinquent in establishing or enforcing the required program, the federal government must resort to drastic remedies such as placing certain state functions in receivership and imposing substantial civil penalties on state officials.[103] It is difficult to conceive of a regulatory scheme more disruptive to the federal system.

Similarly, the Administrator's regulations which require financial commitments for additional buses from WMATA buses from Maryland, Virginia and the District of Columbia resurrect the flaw inherent in the Articles of the Confederation. In order to ensure that the required contributions toward the purchase of buses are made, both Maryland and Virginia must enact legislation completely restructuring their respective relationships with WMATA and with their counties and

[103] See p. 12 *supra*.

political subdivisions. They must also pass legislation appropriating the necessary funds.

The framers learned after hard experience that a system, in which the federal government was dependent upon the states to carry out its purposes, was unworkable and disruptive. They created a system that makes coerced state participation both unnecessary and unconstitutional.

D. The Decisions Of This Court Have Consistently Recognized That The Federal Government Does Not Have The Power To Compel The States To Enact Laws, Adopt Regulations, Or Enforce Federally Mandated Regulatory Programs.

The early decisions of this Court reaffirmed the basic structural principle of the Constitution, that the federal government would have the power to act on individuals and not on the states. In *Hylton v. United States,* 3 U.S. (3 Dall.) 171, 178 (1796), Justice Patterson noted that "the fiscal power is exerted certainly, equally, and effectually on individuals; it cannot be exerted on States." Justice Iredell, who had been a member of the North Carolina ratifying convention, began from the same basic premise:

> The present Constitution was particularly intended to affect individuals and not States, except in particular cases specified. *Id.* at 181.

Two decisions of this Court which bear directly on EPA's assertion of power under the Commerce Clause to require the states to legislate are *McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819), and *Gibbons v. Ogden, supra.* In those two cases, Chief Justice Marshall made the first systematic exposition of the scope of federal power under the Commerce Clause and the Necessary and Proper Clause. *McCulloch v. Maryland* held unconstitutional a tax imposed by

Maryland on the Bank of the United States. In defining the relationship between the power of the federal government and the power of the states, Chief Justice Marshall emphasized that the framers of the Constitution intended that the federal government would have the independent power to achieve its purposes and would not have to rely on the powers of the states.

> No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the states, for the execution of the great powers assigned to it. *Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends.* To impose upon it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the Constitution. *Id.* at 424 (emphasis added).

In *Gibbons v. Ogden, supra*, the Court held that the power of Congress under the Commerce Clause to license vessels plying the coastal trade limited the power of New York to regulate those same vessels sailing in New York waters. Chief Justice Marshall was careful to observe, however, that the plenary power of Congress to regulate commerce does not include the power to compel the states to exercise their governmental powers to regulate activities that Congress itself has the power to regulate. The Chief Justice stated:

> If Congress license vessels to sail from one port to another, in the same state, the act is supposed to be, necessarily, incidental to the power expressly granted to Congress, and implies no claim of a direct power to regulate the purely internal commerce of a state, *or to act directly on its system of police. Id.* at 204 (emphasis added).

Chief Justice Marshall's analysis of the power of the federal government under the Constitution squarely repudiates the Administrator's assertion of the power to require the states to legislate, to adopt regulations and to enforce federal regulations. The federal power extends to subjects such as interstate commerce. It does not extend to the concurrent powers of the states over those same subjects.

Decisions of this Court involving federal powers other than those exercised under the Commerce Clause have stressed the fundamental principle that the federal government can not require state officers to execute federal laws. For example, in *Ex Parte Kentucky v. Dennison,* 65 U.S. (24 How.) 66 (1860), the Court faced the issue of whether the Governor of Ohio could be compelled to return a fugitive from justice to Kentucky, pursuant to an Act of Congress and Article IV, Section 2 of the Constitution. Chief Justice Taney held that the duty to surrender a fugitive from justice was judicially unenforceable.

> But looking to the subject matter of this law and the relations which the United States and the several states bear to each other, the court is of opinion, the words 'it shall be the duty' were not used as mandatory and compulsory, but as declaratory of the moral duty which this compact created, when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the state; nor is there any clause or provision in the Constitution which arms the government of the United States with this power. Indeed, such a power would place every state under the control and dominion of the general government, even in the administration of its internal concerns and reserved rights. And we think it clear that the Federal government, under the Constitution, has no power to impose on a state officer, as such, any duty whatever, and compel

> him to perform it. . . . [I]f the Governor of Ohio refuses to discharge this duty, there is no power delegated to the general government, either through the judicial department or any other department, to use any coercive means to compel him. *Id.* at 107-110.

In *United States v. Jones,* 109 U.S. 513 (1883), the Court considered the validity of an act of Congress transferring to a state board and a state court the function of determining the value of property taken by condemnation. In upholding that law, the Court indicated that the transfer of functions to state officers and courts was valid only where the state had granted consent.

> . . . [F]rom the time of its establishment [the federal] government has been in the habit of using, with the consent of the States, their officers, tribunals, and institutions as its agents. . . . The use of the courts of the States in applying the rules of naturalization prescribed by Congress, the exercise at one time by State justices of the peace of the power of convicts under such laws, are instances of the employment of State tribunals and State institutions in the execution of powers of the general government. At different times various duties have been imposed by acts of Congress on State tribunals; they have been invested with jurisdiction in civil suits and over complaints and prosecutions for fines, penalties, and forfeitures arising under laws of the United States. . . . And though the jurisdiction thus conferred could not be enforced against the consent of the State, yet, when its exercise was not incompatible with State duties, and the States made no objection to it, the decisions rendered by the State tribunals were upheld. *Id.* at 519-520.

The Administrator cites *Testa v. Katt,* 330 U.S. 386 (1947), as the sole authority for the proposition that he can require the States to establish and enforce federally imposed transportation control strategies. That case,

involved a suit by a private individual to recover treble damages from another private individual for violation of the Emergency Price Control Act of 1942. This Court held only that a state court cannot, under the Supremacy Clause, refuse to enforce a claim brought under federal law where that court would entertain a similar claim under state law. The case has absolutely nothing to do with congressional power under the Commerce Clause and, consequently, it does not hold, as the Administrator suggests, that the Supremacy Clause is a source of federal power to require affirmative state action to regulate commerce.

The Administrator's theory of supremacy is that federal laws and regulations can require state executive officials to exercise their governmental powers just as the Constitution requires state courts to hear cases arising under federal law. Under the Administrator's theory of the Supremacy Clause, it would be irrelevant whether the state is a "polluter" or has engaged in any activities affecting commerce. The decision to impose additional duties on state executive and legislative branches would be merely a question of the discretion of Congress. If such a theory of supremacy is upheld, then Congress could force the states to assume any part of the burden and expense of regulating commerce. Instead of regulating commerce, Congress would regulate the state governments. That would be repugnant to and destructive of the federal system the founders created.

The States recognize that the Thirteenth, Fourteenth, and Fifteenth Amendments grant Congress the power to intrude "into judicial, executive, and legislative spheres of autonomy previously reserved to the States." *Fitzpatrick v. Bitzner,* 96 S. Ct. 2666 (1976). This Court, however, has made it clear that the powers of the federal government over the states under the Civil War Amendments are considerably greater than the power

of Congress under the Commerce Clause and other provisions of the Constitution. *Id.* at 2670-71. Moreover, even in exercising its broad remedial powers to correct violations of basic rights guaranteed by the Civil War Amendments, this Court has recognized the "delicate issues of federal-state relationships" involved in ordering a mayor or governor to exercise his discretion in a particular way in appointing individuals to public commissions. *See, Mayor of City of Philadelphia v. Educational Equality League,* 415 U.S. 605, 615 (1974) and *Carter v. Jury Commissioner of Greene County,* 396 U.S. 320, 328 (1970).

IV.

THE REGULATIONS WHICH REQUIRE STATES TO MAKE FINANCIAL COMMITMENTS ENABLING WMATA TO PURCHASE BUSES ARE CONTRARY TO THE TERMS OF THE WMATA COMPACT, ARE AN ILLEGAL ATTEMPT TO COMPEL STATE LEGISLATIVE ACTION AND ARE ARBITRARY AND CAPRICIOUS.

Public bus service in the Washington metropolitan area is provided by the Washington Metropolitan Area Transit Authority (WMATA). WMATA operates under an interstate compact entered into by the states of Maryland and Virginia, and the District of Columbia, with the consent of Congress.[104]

Under the compact, WMATA makes plans for the transit needs of the area. The plans are financed by the federal government, the District of Columbia, and the participating local governments. None of those governments, however, is obliged to contribute financially to the plan unless it agrees to do so. (A. 928-29, 933-34). The interests of several of those local governments (Cities of Fairfax and Alexandria and the County of Prince

[104] Act of Nov. 6, 1966, Pub. L. 89-774, 80 Stat. 1324; Virginia Acts of Assembly, Ch. 2 (1966); Ann. Code of Md. (1971 Repl. Vol.) Art. 41, § 117-1, *et seq.* WMATA is governed by a Board of Directors consisting of two directors from each of the jurisdictions that are party to the contract.

William) is best evidenced by their continued participation in this litigation.

A. The States' Proposals for Additional Buses

In 1973, officials from Maryland, Virginia, and the District of Columbia submitted transportation control plans to the Administrator which contained proposals for the acquisition of 750 additional buses by WMATA. Those officials suggested that the buses would be necessary to serve the travel demand generated from the decrease in commuter automobile use anticipated to result from the imposition of parking surcharges and other disincentives proposed by the transportation control plan (A. 901).

The officials, however, had no authority to commit their respective legislatures to appropriate the money for the buses, and they did not assert such authority. In fact, the Virginia plan expressly said, "there is no way air pollution control authorities can prove to EPA that these funds will be allocated" (A. 906).[105]

Moreover, in order to operate the buses, it would also be necessary for the legislatures to provide additional taxing authority to the local governments in order to finance the operating subsidy (A. 905). This, too, the plans could not and did not guarantee.

Apparently, the Administrator did not understand the limitations of the proposals, for he wanted further clarification of the arrangements necessary to expand the WMATA fleet (A. 334). The clarification subse-

[105] The Maryland plan also made no representation that funds would be expended for the buses (A. 334). Maryland's two representatives on the WMATA board are appointed by the Washington Suburban Transit Commission which is a corporate body created by compact under the County Code of Montgomery County and Prince George's County, Maryland. Financial commitments to the WMATA zone in Maryland must be made under contracts approved by the Washington Suburban Transit District.

quently came from the acting chairman of WMATA, Mr. Cleatus Barnett, who testified at a public hearing held by EPA on September 6, 1973 (A. 912).

Mr. Barnett said that WMATA had not agreed to purchase 750 more buses, and none of the WMATA participants had endorsed the proposal (A. 914). He also gave no assurance that WMATA would retain older buses in the fleet, rather than retire them (A. 917).

Mr. Barnett further explained that if any buses were purchased it would be on the basis of programs which WMATA prepared, as feasible, and which the participating governments had endorsed and agreed to finance. There must be agreement "all around the Beltway" plus 80% funding from the federal Urban Mass Transit Administration (UMTA) before WMATA would purchase buses (A. 917-18).

Thus, the Administrator was made aware of the arrangements by which the WMATA fleet might be expanded. First, WMATA itself must develop a feasible plan. Secondly, the legislatures of participating governments, and UMTA, must agree to finance the plan.

Furthermore, the Administrator was clearly advised that WMATA had not agreed to the proposals, and none of the participating governments had endorsed or agreed to finance the plan to purchase additional buses. The WMATA compact does not authorize either the state or federal governments to impose a bus purchase plan on WMATA. Nor does the compact require the participating governments, or the states, to agree to finance a WMATA plan. The transportation control plans submitted by state officials did not purport to alter these arrangements.

B. The Administrator's Regulations Are An Unlawful Attempt To Alter The WMATA Compact And To Compel State Legislative Action.

The regulations promulgated by the Administrator on December 6, 1973, require "representatives" of Virginia, Maryland, the District of Columbia, and WMATA to sign statements, no later than March 1, 1974, indicating that "financial commitments" have been made by the District and the States, or their local governments, to enable WMATA to buy the buses.[106] The statements must also indicate that WMATA has committed to purchase them.

There is no one from the States or WMATA who can sign such assurances if the legislatures of the participating governments have not agreed to appropriate the funds or if WMATA has not determined that the plan is feasible. No such person has the power, under the terms of the compact, to compel the participating governments or WMATA to make these decisions.

Therefore, the Administrator's regulations contravene both the compact rights of WMATA to determine what number of buses, if any, should be purchased, and the compact rights of the participating governments to disagree to the financing. They also totally disregard the fact that Virginia and Maryland have no power or obligation under the compact to make any type of commitment to either WMATA or the participating governments.

If the Administrator feared that the bus proposals were too provisional because of their dependence upon the WMATA compact, then he should have rejected them and promulgated some other measure. He has no authority under the Clean Air Act to alter the terms of an interstate compact which is a law adopted by two

[106] 40 C.F.R. §§ 52.476(g), 52.1080(g) and 52.2435(e); A. 624, 658 and 690 respectively.

states, the District of Columbia and Congress. The Administrator has no power to repeal or amend state or federal laws. The States note, in this regard, that the Administrator has discreetly refrained from requiring a representative of UMTA to certify that UMTA will provide 80% of the funds.

The Administrator's regulations are in fact so contrary to the terms of the WMATA compact that they have gone virtually unnoticed in the ensuing years. Neither WMATA or the participating governments have agreed to purchase the buses specified in the regulations. Instead WMATA and the participating governments have prepared and endorsed their own plans pursuant to the terms of the compact.

WMATA's current plan is shown in its application of June 23, 1976 to UMTA for a federal grant to finance 80% of the cost of 300 new buses. The total cost is $21,120,000. Most of the buses will be regular forty-foot air conditioned vehicles, which now cost $72,000 apiece.

The 300 new buses will be acquired during the fiscal years 1976 and 1977. Their acquisition, however, will not expand the size of the WMATA fleet; the new buses will replace an equal number of old ones, which WMATA is going to sell, to help defray the cost of the new ones. The fleet size in 1977 will be the same as it was in 1974: 2,030 buses. That size is 500 buses less than the 1977 fleet which the Administrator had envisioned would result from his regulations (A. 607).

Therefore, if the States and the District of Columbia can be compelled to pay for the expansion of the WMATA fleet to the size desired by the Administrator, then, by 1977, these governments will have to purchase 500 more new buses, which, at $72,000 apiece, totals $36,000,000. That figure does not include the cost of the operating subsidy. Since it is less expensive for the buses to remain idle than it is to operate them, the buses may not in fact be used.

C. There Is No Justification For Requiring The Purchase Of Additional Buses.

The Administrator has correctly declared on several occasions that increased mass transit is ineffective by itself as a transportation control strategy. To be effective, mass transit must be supported by "disincentives" to private vehicle use. The "parking surcharge" was a crucial "disincentive."

For example in the Federal Register of August 2, 1973 (38 Fed. Reg. 20779), the Administrator stated:

> It is well documented that no matter how well designed and operated a mass transit system is, unless there are disincentives to the use of the private automobile, mass transit will be ineffective. Therefore, Virginia's [and Maryland's and the District of Columbia's] proposals for the surcharge is integral to the success of the plan (A. 377, 254, 333).

On December 6, 1973, in the preamble to the promulgation of his regulations, he stated:

> Despite the objections raised, EPA agrees with the three lead jurisdictions that strong negative disincentives as well as positive incentives are necessary to divert automobile drivers to mass transit. In fact, this is the premise on which the entire transportation portion of the plans submitted by the jurisdictions is based upon (A. 596).

The Administrator's resolve quickly evaporated when exposed to political reality. On January 15, 1974, the Administrator completely withdrew the "parking surcharge" regulations. 39 Fed. Reg. 1848. On June 22, 1974, the President signed into law the Energy Supply and Environmental Coordination Act, Pub. L. 93-319, 88 Stat. 246, which prohibited the Administrator from imposing "parking surcharges."

The government officials of Virginia and Maryland and the District of Columbia have themselves prudently

declined to tread upon the political hotbed of automobile "disincentives". Thus, the "parking surcharge" which was the premise of the bus proposals, and integral to their success, is no longer a part of the transportation control plans.

Therefore, the Administrator's argument that providing additional buses "is simply one measure by which this kind of air pollution can be reduced[107] is a direct contradiction of every statement he has made on that subject in the past. Buying buses does not reduce air pollution. Operating buses does not reduce air pollution. Getting people out of their automobiles might reduce air pollution, but the Administrator will not bell that cat.

D. Conclusion

The States have no power or obligation to provide commercial bus services, except as the state legislatures may desire. State ownership and operation of public highways does not give rise to such an obligation. Even if state or federal laws were to restrict the use of private automobiles, the States are still under no inherent obligation to bus people to work.

Providing additional buses may make laws such as "parking surcharges" more palatable, but that is for the voters to decide, not the Administrator. The voters may want only "parking surcharges" without extra buses. If they decide they want the government to provide more buses, then they can tell their legislature to raise taxes and buy more buses. That is the process for making such decisions under our federal system.

The States ask this Court to consider the real consequences if the Administrator's asserted power is sustained. First, if a state-created transit authority can be appropriated to serve the Administrator's will at the states' expense, then states will no longer create such

[107] Brief for the Federal Parties at 38.

authorities. Second, if formative proposals put forth by state agencies can be thrust back upon the state legislatures as federal mandates, then those agencies will no longer recommend such proposals to the Administrator. Those agencies realize that a state legislature would not support a state agency which exercises the extraordinary power of establishing, by way of a federal administrator, that state's laws and tax structure. Therefore, if the contested regulations are upheld, the ironic result will be that state efforts to provide for mass transit and air pollution control planning will come to an end.

CONCLUSION

For the reasons set forth in this brief, the States request this Court to hold that the Administrator's regulations listed on pages 2-3 *supra* are contrary to the Clean Air Act and are an unconstitutional exercise of federal power. The decisions of the Courts of Appeals for the Fourth and Ninth Circuits with respect to those regulations should be affirmed. The decision of the Court of Appeals for the District of Columbia that the Administrator does not have the power to require the States to adopt, implement and enforce vehicle emission inspection and maintenance programs should be affirmed. The decision of that court upholding the

Administrator's exclusive bus lane and increased bus fleet regulations and that part of the inspection and maintenance regulations prohibiting the States from registering vehicles that do not comply with federal emission standards should be reversed.

Respectfully submitted,

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APPENDIX A

VEHICLE EMISSION INSPECTION AND MAINTENANCE PROGRAM FOR THE METROPOLITAN BALTIMORE INTRASTATE AQCR

(38 Fed. Reg. 34249 (December 12, 1973))

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Baltimore, Maryland Transportation Control Plan

* * * * * *

§ 52.1095 Inspection and maintenance program.

(a) Definitions:

(1) "Inspection and maintenance program" means a program for reducing emissions from in-use vehicles through identifying vehicles that need emission control-related maintenance and requiring that such maintenance be performed.

(2) "Light-duty vehicle" means a gasoline-powered motor vehicle rated at 6,000 lb gross vehicle weight (GVW) or less.

(3) "Medium-duty vehicle" means a gasoline-powered motor vehicle rated at more than 6,000 lb GVW and less than 10,000 lb GVW.

(4) "Heavy-duty vehicle" means a gasoline-powered motor vehicle rated at 10,000 GVW or more.

(5) All other terms used in this section that are defined in Part 51, Appendix N, of this chapter are used herein with the meanings so defined.

(b) This section is applicable within the Metropolitan Baltimore Intrastate AQCR.

(c) The State of Maryland shall establish an inspection and maintenance program applicable to all

light-duty, medium-duty, and heavy-duty vehicles registered in the area specified in paragraph (b) of this section that operate on public streets or highways over which it has ownership or control. The State may exempt any class or category of vehicles that the State finds is rarely used on public streets or highways (such as classic or antique vehicles). No later than April 1, 1974, the State shall submit legally adopted regulations to the Administrator establishing such a program. The regulations shall include:

(1) Provisions for inspection of all light-duty, medium-duty, and heavy-duty motor vehicles at periodic intervals no more than 1 year apart by means of a loaded emission test.

(2) Provisions for inspection failure criteria consistent with the failure of 30 percent of the vehicles in the first inspection cycle.

(3) Provisions to ensure that failed vehicles receive within two weeks, the maintenance necessary to achieve compliance with the inspection standards. These shall include sanctions against individual owners and repair facilities, retest of failed vehicles following maintenance, use of a certification program to ensure that repair facilities performing the required maintenance have the necessary equipment, parts, and knowledgeable operators to perform the tasks satisfactorily, and use of such other measures as may be necessary or appropriate.

(4) A program of enforcement to ensure that vehicles are not intentionally readjusted or modified subsequent to the inspection and/or maintenance in such a way as would cause them to no longer comply with the inspection standards. This enforcement program might include spot checks of idle adjustments and/or a suitable type of physical tagging. This program shall include appropriate penalties for violation.

(5) Provisions for beginning the first inspection cycle by August 1, 1975, and completing it by July 31, 1976.

(6) Designation of an agency or agencies responsible for conducting, overseeing, and enforcing the inspection and maintenance program.

(d) After July 31, 1976, the State shall not register or allow to operate on public streets or highways any light-duty, medium-duty, or heavy-duty vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(e) After July 31, 1976, no owner of a light-duty medium-duty, or heavy-duty vehicle shall operate or allow the operation of such vehicle that does not comply with the applicable standards and procedures adopted pursuant to paragraph (c) of this section. This shall not apply to the initial registration of a new motor vehicle.

(f) The State of Maryland shall submit, no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including:

(1) The text of needed statutory proposal and regulations that it will propose for adoption.

(2) The date by which the State will recommend needed legislation to the State legislature.

(3) The date by which necessary equipment will be ordered.

(4) A signed statement from the Governor or his designee identifying the sources and amounts of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.

APPENDIX B

REVOCATION OF GASOLINE RATIONING REGULATIONS

Federal Register, Vol. 41, No. 201 Friday, October 15, 1976

Title 40—Protection of Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revocation of Gasoline Rationing Regulations

Under the Clean Air Act as amended in 1970, State Implementation Plans (SIP's) were required to contain all regulations necessary to attain the health-related national ambient air quality standards (NAAQS) no later than mid-1977. To the extent that State-developed SIP regulations are inadequate to insure such NAAQS attainment, the Act requires EPA to promulgate the necessary SIP regulations.

In 1973, EPA was required by Court orders to promulgate SIP regulations providing for timely attainment of the NAAQS for carbon monoxide and photochemical oxidants in certain areas of the United States. In response to these orders, EPA added to some SIP's a gasoline rationing regulation to take effect in 1977. This type of regulation was imposed only in those areas where EPA found that all reasonably available measures would not be adequate to attain the NAAQS by mid-1977.

At the time EPA promulgated the gasoline rationing regulations and several times since then, EPA has publicly stated that such regulations would produce extremely adverse social and economic consequences if implemented. Since EPA has had no desire to implement the regulations, EPA has since 1973 proposed and

endorsed amendments to the Clean Air Act which would authorize their revocation. Over the last several months, new Clean Air Act amendments which would have authorized such a revocation passed both Houses of Congress (H.R. 10498 and S. 3219). Such authorization was retained in the compromise amendments approved by the House and Senate Conferees. On October 1, however, Congress adjourned without completing action on the new Clean Air Act amendments.

Since it appears quite unlikely that Congress will enact new legislation before implementation of the gasoline rationing regulations is scheduled to begin (certain reports are to be filed by March 1977 and full implementation is to occur in May 1977), and since EPA has no intention of implementing the regulations, I believe that EPA should revoke them now.

I realize that this revocation will render the affected SIP's defective as a legal matter, since such SIP's will no longer contain regulations which provide for NAAQS attainment. I am convinced, however, that whatever benefits may be gained from keeping a technically legal SIP on the books by retaining the gasoline rationing regulations are outweighed by the seriously disruptive social and economic consequences of such regulations.

This revocation should not be construed as indicating that EPA will accept SIP's which do not insure attainment of the health-related NAAQS on grounds of cost. In fact, EPA is currently in the process of notifying many States that their presently-inadequate SIP's must soon be revised to include all achievable measures necessary to attain the NAAQS as expeditiously as practicable. Onerous, expensive, and/or "technology-forcing" requirements must be imposed wherever necessary. EPA's action today is thus a special case; it is being taken only because of the extraordinarily disruptive nature of the gasoline rationing regulations and because both Houses of Congress have affirmatively expressed their desire that such regulations not be implemented.

This revocation is effective October 15, 1976.

(Secs. 110, 301, Clean Air Act, as amended, (42 U.S.C. 1857c-5, 1857g).)

Dated: October 12, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

§ 52.241 [Revoked]

1. Section 52.241 is revoked.

Subpart G—Colorado

§ 52.330 [Revoked]

2. Section 52.330 is revoked.

Subpart V—Maryland

§ 52.1110 [Revoked]

3. Section 52.1110 is revoked.

Subpart FF—New Jersey

§ 52.1592 [Revoked]

4. Section 52.1592 is revoked.

Subpart SS—Texas

§ 52.2293 [Revoked]

5. Section 52.2293 is revoked.

APPENDIX C

EXCERPTS FROM THE LEGISLATIVE HISTORY OF THE CLEAN AIR AMENDMENTS OF 1970

1. The report of the Conference Committee summarizes the provisions of the conference version of section 113, the version later enacted by Congress, in the following language:

> In case of a violation of any requirement of a State implementation plan, the Administrator is to notify the State in which the violation occurs as well as the violator. If the violation extends beyond the thirtieth day after notification, the Administrator may issue an order requiring compliance by such person or may bring court action against such person. In case of a State failure to enforce a plan, the Administrator shall notify the State. If the State's failure to enforce such plan extends beyond the thirtieth day after notification, the Administrator is to give public notice of such finding and thereupon, until the State resumes enforcement of [the] plan, the Administrator may enforce the implementation plan either through an order requiring any violator in such State to comply or by bringing court action against any such violator.

H. R. Rep. No. 91-1783, 91st Cong., 2d Sess. 47 (1970). This excerpt gives no indication that section 113 procedures are to be used against a state if it failed to follow the Administrator's dictates in regulating the pollution-creating activities of others.

2. In the December 8, 1970, congressional debates on the conference bill, Senator Muskie, the chief Senate architect of the Clean Air Amendments of 1970, submitted the following statement for the record:

> Federal enforcement under Section 113 leaves the primary responsibility with the States for enforcing requirements under implementation plans. The Administrator can issue an abatement order to a polluter or go to court seeking an injunction only

> after 30 days' notice to any individual polluter, or 30 days after notifying the State that the Federal Government is generally assuming enforcement powers in that State because of a widespread failure of States' enforcement.

A Legislative History of the Clean Air Amendments of 1970, Congressional Research Service, Library of Congress (Serial No. 93-18, Jan. 1974) at 133.

3. The committee report on the Senate bill contained the following language:

> The Committee bill would require that a rigorous time sequence be met in the development of the implementation plan and would provide for the substitution of Secretarial authority if the State plan, or a portion thereof, is inadequate to attain the quality of ambient air established by the nationally promulgated ambient air quality standard.

S. Rep. No. 91-1196, 91st Cong., 2d Sess. 12 (1970).

4. The Committee report on the House bill contained the following language:

> Such emission standards may be enforced either by a State as part of that State's plan or by the Secretary if a State fails to include such standards within its plans.
>
> . . .
>
> Whenever the Secretary finds that as a result of the failure of a State to enforce the plan applicable to such State, any ambient air quality standard is not met, the Secretary is directed to notify the affected State or States, persons not in compliance with the plan and other interested parties. If the failure of the State to take action extends beyond the 30 days after the Secretary's notification, the Secretary may request the Attorney General to bring suit on behalf of the United States in the appropriation U. S. district court to secure abatement of the pollution.

H. R. Rep. No. 91-1146, 91st Cong., 2d Sess. 3, 9 (1970).

FOR ARGUMENT

Supreme Court, U. S.
FILED
JAN 7 1977
MICHAEL RODAK, JR., CLERK

Nos. 75-909, 75-960, 75-1050, and 75-1055

In the Supreme Court of the United States

OCTOBER TERM, 1976

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v.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

STATE OF MARYLAND, ET AL.

COMMONWEALTH OF VIRGINIA EX REL.
STATE AIR POLLUTION CONTROL BOARD, PETITIONER

v.

RUSSELL E. TRAIN, ADMINISTRATOR,
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RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

DISTRICT OF COLUMBIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

REPLY BRIEF FOR THE FEDERAL PARTIES

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH, AND DISTRICT OF COLUMBIA CIRCUITS

REPLY BRIEF FOR THE FEDERAL PARTIES

We first discuss respondents' constitutional arguments and next reply to their statutory contentions. In Part III, we address respondents' assertion that the "programs at issue here will make at best a small contribution to achieving the ambient air quality standards required by the Clean Air Act" (Resp. Brief, p. 14). In Part IV, we explain that the EPA Administrator has decided to withdraw the bus purchase regulations challenged by the Commonwealth of Virginia in Pet. No. 75–1050, and similar regulations for Maryland and the District of Columbia.

I.

RESPONDENTS' CONSTITUTIONAL ARGUMENTS

In our opening brief, we discussed whether under *National League of Cities* v. *Usery,* No. 74–878, decided June 24, 1976, the regulations challenged here threaten the separate and independent existence of the States. We concluded that they did not because of the absence of any broad interference with State policies; the lack of any substantial impact on State budgets; the need to achieve the essential national goal of reducing air pollution; the fact that this can be done only through national action involving the States as operators of their highways; the carefully limited intrusion into an area (pollution control) that had been left to the States; and the great deference shown to the State's choice of the methods

for achieving air quality, with the EPA Administrator imposing a plan only if the State defaults.

Respondents invite the Court to follow a different path of analysis. They advance the theory that Congress has no authority under the Commerce Clause to require States to comply with federal law because, in regulating commerce among the States, Congress is empowered only to act directly on individuals.[1] On this basis, respondents contend that the air pollution stemming from a State's operation of its highways cannot be considered a burden on interstate commerce (Brief, p. 61); that the federal regulations at issue unconstitutionally invade state sovereignty by forcing the States to control such air pollution (Brief, pp. 61–66); that federal compulsion on the States violates the system of government intended by the Framers of the Constitution (Brief, pp. 66–73); and that the decisions of this Court support the proposition "that the federal government would have the power to act on individuals and not on the states" (Brief, p. 73).

We believe the issues presented here cannot be analyzed on respondents' terms. For the reasons that follow, we disagree with their basic premise and urge the Court to reject it.

"Faced with a compelling need to strengthen the central government," respondents tell the Court (Brief, p. 71), "the framers briefly contemplated and emphatically rejected a solution granting the central government power to exercise coercive power directly against State governments." If this view were ac-

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[1] Resp. Brief, pp. 55, 59–61, 64–66, 68–73, 75–78.

curate, it would indeed be remarkable that the Framers' emphatic rejection nowhere manifests itself in the language of the Constitution. One will search that document in vain for any clause, any word indicating that the Framers intended to confer such immunity on the States. To the contrary, a careful reading discloses that the Constitution itself expressly imposes many duties—both negative and positive—on the various institutions of State governments,[2] duties that in many cases obligate the States to exercise their governmental powers and make expenditures of funds. These are not, one can say with assurance, "mere recommendations, which the States [may] observe or disregard at their option."[3]

It is true, as respondents emphasize (Brief, pp. 16–17, 66–73), that a major defect of the Articles of Confederation was that no State could be compelled to comply with them and that an important innovation in the Constitution was the conferring of power upon the federal government to bypass the States and act directly on individual citizens. It is not true, however, that the States were thereby relieved of any duty to comply with federal law, as respondents urge

[2] *E.g.*, Article I, Section 3, Clause 1 (changed by the Seventeenth Amendment); Article I, Section 4, Clause 1; Article I, Section 10; Article II, Section 1, Clause 2; Article II, Section 2, Clause 1; Article III, Section 2, Clause 2; Article IV, Section 1; Article IV, Section 2; Article IV, Section 3; Article VI; see also Amendments Thirteen, Fourteen, Fifteen, Seventeen, Twenty-Four, and Twenty-Six.

[3] The quotation is from Hamilton's description of the defects in the Articles of Confederation, *The Federalist* No. 15, p. 93 (Cooke ed. 1961), quoted in respondents' brief, p. 7.

(*id.* at 70–73). That would have merely repeated the mistake of those who devised the Articles of Confederation. The Framers of the Constitution were not so unmindful of the recent past; they altered the existing structure of the Constitution by obligating the States to abide by federal law and they did this not only through the Supremacy Clause in Article VI, but also by requiring each member of the state legislatures and the executive and judicial officers of the States to be bound by oath or affirmation to support the Constitution (Article VI, Clause 3).[4] After explaining these provisions, Hamilton concluded in *The Federalist* No. 27: "Thus the Legislatures, Courts and Magistrates of the respective members will be incorporated into the operations of the national government, *as far as its just and constitutional authority extends;* and will be rendered auxiliary to the enforcement of its laws."[5] At this point Hamilton dropped a footnote:[6] "*The sophistry which has been employed to show that this will tend to the destruction of the State Governments will, in its proper place, be fully detected.*"[7]

[4] See generally Corwin, *National-State Cooperation—Its Present Possibilities*, 46 Yale L.J. 599 (1937).

[5] *The Federalist* No. 27, p. 175 (Cooke ed. 1961) (emphasis in original).

[6] *Ibid.* (emphasis in original).

[7] Quite relevant here is Chief Justice Marshall's statement in regard to *The Federalist:* "These essays having been published, while the constitution was before the nation for adoption or rejection, and having been written in answer to objections founded entirely on the extent of its powers, and on its diminution of state sovereignty, are entitled to the more consideration, where they frankly avow that the power objected to is given, and defend it." *Cohens* v. *Virginia*, 6 Wheat. 264, 418–419.

Nearly a century ago, the Court in *Ex parte Siebold,* 100 U.S. 371, 392, held in regard to our federal system of government:[8] "As a general rule, it is no doubt expedient and wise that the operations of the State and national governments should, as far as practicable, be conducted separately, in order to avoid undue jealousies and jars and conflicts of jurisdiction and power. But there is no reason for laying this down as a rule of universal application. It should never be made to override the plain and manifest dictates of the Constitution itself. We cannot yield to such a transcendental view of state sovereignty. The Constitution and laws of the United States are the supreme law of the land, and to these every citizen of every State owes obedience, whether in his individual or official capacity."[9]

This merely echoed Mr. Chief Justice Marshall's statement for the Court in *Cohens* v. *Virginia,* 6 Wheat. 264, 414, that

> America has chosen to be, in many respects, and to many purposes, a nation; and for all these purposes, her government is complete; to all these objects, it is competent. The people declared, that in the exercise of all powers given for these objects, it is supreme. It can then, in

[8] In *Ex parte Siebold, supra,* the Court upheld Congress' power, under Article I, Section 4, Clause 1 of the Constitution to impose duties on state election officials holding a congressional election and to prescribe penalties designed to compel compliance.

[9] The Court added that "if we allow ourselves to regard [the national government] as a hostile organization, opposed to the proper sovereignty and dignity of State governments, we shall continue to be vexed with difficulties as to its jurisdiction and authority." 100 U.S. at 394.

> effecting these objects, legitimately control all individuals or governments within the American territory. * * * These states are constituent parts of the United States; they are members of one great empire—for some purposes sovereign, for some purposes subordinate.

Respondents' theory that the federal government must act "directly on individuals" or not at all (Brief, pp. 61, 73)[10] cannot be reconciled with *Ex parte Siebold, supra.*[11] It is a theory that was not relied upon or suggested by the Court's opinion in *National*

[10] Respondents think it significant that the Philadelphia Convention did not adopt two clauses of the Sixth Virginia Resolution, set forth at Resp. Brief 68, which allowed the national legislature (1) to negative State laws violating the Constitution and (2) to call forth the "force of the Union" against any State failing to fulfill its duty under the Constitution.

But the power of the negative was thought unnecessary in light of the Supremacy Clause and was defeated on that basis. 2 Farrand, *The Records of the Federal Convention of 1787* 21–22, 27–28 (1937).

Consideration of the clause regarding the use of force against a State was, on Madison's motion, deferred early in the Convention and not acted upon thereafter. 1 Farrand, *supra,* at 54. But this proves nothing. As Madison later observed (3 Farrand, *supra,* at 528), Jefferson had pointed out that the power was in any event implied and "Compulsion was never * * * more safe than in the hands of Congress which has always shown that it would wait, as it ought to do, to the last extremities before it would execute any of its powers which are disagreeable." Jefferson to Edward Carrington, August 4, 1787, in 4 *The Writings of Thomas Jefferson* 424 (Ford ed. 1894). Moreover, Madison further noted that the clause was in part intended "as a substitute for, or as a supplement to the ordinary mode of enforcing the laws by Civil process * * *." 3 Farrand, *supra,* at 528.

[11] In fact, respondents' arguments in this case are strikingly similar to those of Mr. Justice Field, dissenting in *Ex parte Siebold, supra,* 100 U.S. at 399, and the companion case of *Ex parte*

League of Cities v. *Usery*, No. 74–878, decided June 24, 1976. And it is a theory that cannot stand in the face of the numerous decisions of this Court sustaining federal legislation under the Commerce Clause that required state compliance. Many such decisions are cited in our opening brief (pp. 47 n. 49, 52, 53 n. 61) and in respondents' brief (at p. 58 n. 89).[12]

Clarke, 100 U.S. 399, 404–422, arguments the Court rejected in both cases.

The broad language in the Court's opinion in *Kentucky* v. *Dennison*, 24 How. 66, 107–110, quoted by respondents (Brief, at 75–76), must be read in light of the unique setting of that case, which was decided on the eve of the Civil War and involved an attempt by Kentucky to compel the Governor of Ohio to deliver a fugitive, who was charged in Kentucky with enticing a slave to leave his master. Regardless of the extent of the continuing vitality of the decision in the field of extradition, it has not been applied more broadly. *Ex parte Siebold* did not adopt it, although the dissenting opinion in the *Siebold* case relied heavily on language from the *Dennison* opinion. See also *Testa* v. *Katt*, 330 U.S. 386, and the other decisions we discuss herein sustaining federal laws that imposed duties on the States and their officials.

[12] Mr. Justice Black, writing for the Court in *Case* v. *Bowles*, 327 U.S. 92, 101, specifically rejected the argument, based on the Tenth Amendment, "that there is a doctrine implied in the Federal Constitution that 'the two governments, national and state, are each to exercise its powers so as not to interfere with the free and full exercise of the powers of the other.' "

Indeed, the first Selective Service Law, 40 Stat. 76, 80–81, authorized the President to "utilize the service of any or all departments and any or all officers or agents * * * of the several States, Territories, and the District of Columbia." The failure of any person so appointed fully to perform any duty required of him was punishable as a misdemeanor on conviction in any federal district court. Registration for the draft took place at local polling places, under state, not federal control; thus state officials, with federal supervision, were responsible for the initial implementation of the federal statute. See Crowder, *The Spirit of Selective Service* 119–122 (1920); Holcombe, *The States as Agents of the Nation*, 1 Southwestern Political Science Quarterly 307 (1921). This Court summarily rejected the argument that the Constitution prohibited requiring state officials to administer the federal statute. *Selective Draft Law Cases*, 245 U.S. 366, 373, 389.

In seeking to explain those Commerce Clause decisions, respondents adopt a different theory. They say that in those cases "the state activity subject to direct regulation was identical to economic activity carried on by private persons or enterprises" (*id.* at 58); on the other hand, the subject of the federal law here is highways and "[o]nly governments own and operate public highways" (*id.* at 60; footnote omitted). Why any of this should make a constitutional difference respondents do not explain. To be sure, only governments own public highways; but only state and local governments own municipal incinerators, police cars, public railroads and penal institutions, all of which respondents concede must comply with various federal laws, including the Clean Air Act (Resp. Brief at 34, 38 n. 61, 58–59). Moreover, if a State, for example, barred private trash burning and required all incinerators to be state-owned, there would be no private activity identical to the State's. Yet, we can conceive of no reasons—and respondents offer none—why on that basis such incinerators should suddenly become immune from federal air quality regulations. On the other hand, respondents surely cannot be proposing an historical test, under which those activities carried on by state governments in 1787 would be exempt from federal laws regulating interstate

commerce. As we have pointed out (Brief, p. 55 n. 65) and as the intervenors discuss,[13] most roads were privately owned and managed in the early history of our country.

In any event, respondents' public-private distinction conflicts with *Fry* v. *United States,* 421 U.S. 542, which upheld the Economic Stabilization Act of 1970 as applied to state employees engaged in a wide range of activities that are in no wise identical to activities in the private sector. Still further, their theories are contrary to *Sanitary District of Chicago* v. *United States*, 266 U.S. 405,[14] in which the Attorney General of the United States sued to enjoin the Sanitary District of Chicago from diverting water from Lake Michigan in violation of federal law. Mr. Justice Holmes, speaking for a unanimous Court, answered the Sanitary District's argument that the diversion, which was pursuant to a state statute and a means of disposing of Chicago's sewage, was needed to protect public health (266 U.S. at 426):

> The main ground is the authority of the United States to remove obstructions to interstate and foreign commerce. There is no question that this power is superior to that of the States to provide for the welfare or necessities of their inhabitants. In matters where the States may act the action of Congress overrides what they have done.

The *Sanitary District* decision—which respondents do not cite—is significant for a number of reasons.

[13] Brief for Washington Area Bicyclist Ass'n, *et al.*, in No. 75-1055, at 20-25.

[14] Discussed in our opening brief, at p. 53 n. 61.

At issue was sewage disposal, which might be deemed an "essential" state function. Sewer systems are state owned and operated; there is no identical private activity. The State itself does not create sewage; the private sector does; but the State is nevertheless responsible for the pollution generated. Moreover, the *Sanitary District* decision required the state agency to comply with federal law, thereby placing a mandatory duty on state officers. In fulfilling that duty, the state agency was required to alter the system of waste disposal; and that would doubtless require the expenditure of funds[15] or, as respondents put it, alteration of the State's "operating budget * * * which establishes priorities and programs through the appropriation of funds" (Resp. Brief, p. 24).[16] See note 23, *infra.*

Illinois v. *City of Milwaukee,* 406 U.S. 91,[17] is also

[15] See 266 U.S. at 425, 431. The City of Chicago had argued that "it is threatened with the loss of a hundred million dollars." *Id.* at 431.

[16] Respondents say we have cited no case to support the proposition that a federal official can "confer upon state agencies or officials powers which the state legislature has not granted, and then require those state officials to exercise those powers under threat of criminal and civil sanctions" (Brief at 24). *Sanitary District* is such a case; the federal official was the Secretary of War; the state officials were required to regulate their diversion of water in a manner contrary to that required by state law; and they were subject to civil suits and criminal liability for their failure to comply. See also, *e.g.*, *Ex parte Siebold*, *supra; Fry* v. *United States*, 421 U.S. 542; cf. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, in which the Court recognized that Congress, acting under the Commerce Clause, could confer additional authority on state or municipal officials.

[17] See our opening brief, p. 26.

on point, despite respondents' claim to the contrary (Resp. Brief, at 43–44). In denying the State of Illinois leave to file a bill of complaint under the Court's original jurisdiction, the Court held, unanimously, that the State could sue in the federal district court, "whose powers are adequate to resolve the issues." 406 U.S. at 108. The State's suit was against four Wisconsin cities and two local sewage commissions who allegedly discharged 200 million gallons of inadequately treated sewage each day into Lake Michigan. The Court held that the case was within the district court's general federal question jurisdiction (28 U.S.C. 1331) because, in the absence of federal legislation on point, federal common law imposed duties on States and municipalities with respect to water pollution. 406 U.S. at 103–108.[18]

This is still another instance where the Court recognized that state and local governments may be subject to mandatory federal requirements even in the exercise of what might be deemed "essential" state functions. To be sure, in *Illinois* v. *City of Milwaukee* the federal duties were to be developed by the judiciary's creating federal common law and exercising traditional equitable powers. 406 U.S. at 108. But the decision speaks also to congressional authority because the federal judiciary may fashion such common law only in regard to matters that are within Congress' power to regulate; in this regard, the federal judicial power

[18] In dictum, the Court also indicated that such federal common law would control air in its "ambient or interstate aspects." 406 U.S. at 103 See *Washington* v. *General Motors Corp.*, 406 U.S. 109, 114–116.

is no greater than the legislative power.[19] Indeed, the Court noted that federal legislation could preempt the field (406 U.S. at 107), and such legislation was enacted shortly after the decision.[20]

If one State is entitled under federal common law to injunctive relief forcing another State and its municipalities to clean up the pollution for which they are responsible, *a fortiori* Congress has the constitutional authority to impose such duties on state instrumentalities in order to protect the people of the entire nation. This is peculiarly an area in which national action is demanded. And there is no practical method of avoiding federal action directly on a State when, as here, the State itself bears responsibility for contamination of the air through the use of its roads and highways. Respondents say this is federal compulsion on the States. We do not deny it. The law imposes a duty and it has a sanction. But it is not for that reason unconstitutional, as we have sought to demonstrate.

Respondents advance two further constitutional objections that warrant a reply. First, they insist that the EPA Administrator has directed the States

[19] As has been pointed out, it would be intolerable if the federal courts could create "common law" that was not subject to congressional revision. See Friendly, "In Praise of Erie—And of the New Federal Common Law," in *Benchmarks* 167–170 (1967).

[20] See the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816; *Environmental Protection Agency* v. *California ex rel. State Water Resource Control Board*, No. 74–1435, decided June 7, 1976, in which the Court pointed out that under the new law "*all* dischargers in the State are subject to a permit program developed and carried out by the EPA." Slip op. 14. See *United States* v. *Douglas County*, 5 E.R.C. 1577 (D. Nev.); cf. *Kansas City, Mo.* v. *Kansas City, Kan.*, 393 F. Supp. 1 (W.D. Mo.); *State Water Control Board* v. *Train*, 8 E.R.C. 1609 (E.D. Va.).

to legislate.[21] We stated in our opening brief that this is not a correct interpretation of the regulations (pp. 20 n. 14, 54). Respondents say this is a change of position. It is not.[22]

Second, respondents contend that even if the regulations do not direct them to legislate, in order to comply they will nevertheless have to legislate, at least to the extent of appropriating the necessary funds (Resp. Brief, at p. 24). But this in itself is not a valid constitutional complaint. It is of no particular significance whether States choose to implement the required measures by enacting legislation, by adopting regulations, by issuing administrative directives

[21] Resp. Brief, pp. 17–18, 23–26, 54–55, 57, 72.

[22] The regulations do not themselves require the States to enact legislation. Rather, they assume that the States might view legislation as necessary or desirable, notwithstanding the Administrator's conclusion that "the Clean Air Act and these regulations can provide the legal basis for [state or local] programs" in the absence of state authority (A. 437). The regulations thus called for the submission of legislative proposals for EPA review where legislation was thought to be "needed" or "necessary." See, *e.g.*, 40 C.F.R. 52.242(f) (A. 505) (California). That direction was part of a general requirement that States submit "compliance schedules" (like those for private sources) identifying the timing of actions to be taken to achieve compliance with applicable substantive requirements. Thus, like compliance schedule requirements for private sources, the requirement was intended to assure that incremental actions thought necessary by the source owners (here, the States) would be taken in a timely manner.

Respondents' claim (Brief, p. 18, n. 25) that EPA has changed its position rests on statements in the opinions below that do not accurately reflect EPA's position as presented to those courts. See Pet. No. 75–960, App. 22a–23a (compare EPA brief below in No. 74–1007, at 14–15); Pet. No. 75–909, App. 26a (compare EPA supplemental brief below in No. 73–3306 at 18 and 8, n. 8); Pet. No. 75–1055, App. 17a–18a n. 19 (compare EPA brief below in No. 74–1013 at 23–24).

or simply by acting. As Mr. Justice Holmes held for the Court in *Wisconsin* v. *Illinois*, 281 U.S. 179, 197, a sequel to the *Sanitary District* case in which Wisconsin sought to compel Illinois to comply with an earlier ruling of the Court,[23] "[i]f its constitution stands in the way of prompt action it must amend it or yield to an authority that is paramount to the State." State compliance here may require the expenditure of funds; but that was also true in many of the cases sustaining federal regulations as applied to the States. Indeed, respondents concede that state-owned incinerators must comply with federal emissions standards[24] yet the purchase and operation of control equipment for this purpose will doubtless entail substantial expenditures. See Edelman v. Jordan, 415 U.S. 651, 668.

II.

RESPONDENTS' STATUTORY ARGUMENTS

While most of respondents' statutory arguments are answered in our opening brief, a number of their contentions warrant a further reply.

[23] See also *Wisconsin* v. *Illinois*, 278 U.S. 367, in which Mr. Chief Justice Taft, speaking for a unanimous Court, stated (*id.* at 420–421):

"The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore they can not now complain if an immediately heavy burden is placed upon the District because of their attitude and course. The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the Lake diversion."

[24] Resp. Brief, pp. 34, 38–39 n. 61.

Respondents argue that the 1970 Amendments to the Clean Air Act are "merely an extension of prior amendments," allowing greater federal involvement in the effort to control air pollution but representing no marked departure from previous efforts, which sought only to encourage the States to act (Resp. Brief, at 27–28).[25] The Court has already rejected this view of Congress' intention. The 1970 Amendments, the Court held in *Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 64, preserved the principle that the States have the primary responsibility for assuring air quality within their geographic territory. The 1970 Amendments, however, differed significantly from previous legislation regarding air pollution. As Mr. Justice Rehnquist stated for the Court, "[t]he difference under the Amendments was that the States were no longer given any choice as to whether they would meet this responsibility." *Id.* at 64.

As we pointed out in our opening brief (pp. 30–32), when a State fails to promulgate an implementation plan, the Administrator is required by Section 110(c) to promulgate one that meets the requirements of Section 110(a)(2). Two of those requirements are that a plan contain, where necessary, "transportation controls," Section 110(a)(2)(B), and include, to the extent necessary and practicable, a provision "for periodic inspection and testing of motor vehicles," Section 110(a)(2)(G). By any common understanding,

[25] See also Resp. Brief, pp. 30, 32, 36–37.

those requirements contemplate controls on the use of roads and automobiles.[26] As a practical matter, the most essential type of controls (inspection and maintenance) can only be effectuated by States and localities.[27] Thus, it is not surprising that "[t]he legislative history of the Clean Air Amendments of 1970 * * * shows a clear expectation that the states would have to implement significant portions of their transportation control plans * * *." *Commonwealth of Pennsylvania* v. *Environmental Protection Agency,* 500 F. 2d 246, 258 (C.A. 3).[28]

[26] See, *e.g.*, S. Rep. No. 91–1196, 91st Cong., 2d Sess. 2, 12–14, 31 (1970), quoted in our opening brief, at p. 32 n. 26; and the colloquy between Senators Muskie and Spong during Senate consideration of the Conference Report, 116 Cong. Rec. 42393 (1970).

[27] Respondents do not appear to dispute this and, in any event, Congress knew that a national system would not be possible. See, *e.g.*, S. Rep. No. 91–1196, *supra*, at 12–13 ("In considering alternative means of controlling emissions of air pollution agents from used vehicles, the Committee was unable to develop a feasible national system"); *id.* at 31 ("Effective State emission testing and inspection programs will be essential to effective implementation of ambient air quality standards * * *"); 116 Cong. Rec. 19204 (1970) (remarks of Rep. Staggers).

[28] See, *e.g.*, H.R. Rep. No. 91–1146, 91st Cong., 2d Sess. 3–4 (1970) ("Additionally, the legislation provides that States must require inspection of motor vehicles in actual use" if this is necessary to achieve ambient air quality standards); S. Rep. No. 91–1196, *supra*, at 12–13; 116 Cong. Rec. 32903 (1970) (remarks of Senator Muskie) (meeting air quality standards "is going to require every State Governor and the mayor of every city in this country to impose strict controls on the use of automobiles * * *"); 116 Cong. Rec. 42387 (1970) (remarks of Senator Muskie) (the legislation "will require that urban areas do something about their transportation systems, the movement of used cars, the development of public transit systems * * *").

Respondents say, however, that Congress provided no remedy for a State's refusal to implement transportation control requirements contained in the relevant implementation plan (Brief, pp. 32–49). Their argument apparently is that if a State fails to draft an implementation plan, the remedy is for EPA to draft it; and if a State fails to *enforce* a plan the remedy is for EPA to enforce it; therefore, if a State fails to *comply* with the substantive provisions of a plan requiring affirmative action on its part the remedy is for EPA to take over the actual implementation of those substantive provisions. In other words, according to respondents, a State's refusal to comply with the provision of a plan that requires it to act is not a violation of that plan (Brief 34).

Respondents' basic error is that they equate "enforcement" of the provisions of a plan with "compliance" with the provisions of a plan. But they cannot be equated, because they are quite different concepts with a significant legal and practical distinction. Enforcement is the taking of some action, administrative or judicial, against a violator to compel it to act in accordance with an affirmative duty contained in the plan. Compliance, on the other hand, is the actual undertaking of the affirmative duty. The Act, as we have discussed, requires States to undertake certain affirmative duties, such as inspection of motor vehicles. The Act also authorizes the Administrator to seek judicial enforcement to require State compliance with an affirmative duty. Sections 110(a)(2) and 113(a)(1).

Congress knew through experience that a voluntary program to abate air pollution throughout the States could not work. See *Train* v. *Natural Resources Defense Council, supra,* 421 U.S. at 63–65. But Congress firmly intended that the air quality standards necessary to protect the citizens of this nation be met. It imposed affirmative duties on the States in order to assure that this would happen. If Congress had further intended to require EPA, upon a State's refusal to act, to deploy armies of federal road maintenance crews, federal mechanics, federal traffic police, and federal registration and licensing officials throughout each such State, Congress surely would have said so. For it is that system of regulation, not the one represented by the position of EPA in these cases, that would, as respondents put it, "stand as an unprecedented exercise of federal power" (Brief, p. 55) and constitute a complete departure from the historic division of responsibilities between the State and national governments in this country.

III.

RESPONDENTS' ARGUMENTS REGARDING THE INSPECTION AND MAINTENANCE PROGRAMS

Respondents assert that the "programs at issue here will make at best a small contribution to achieving the ambient air quality standards required by the Clean Air Act" (Resp. Brief, at p. 14). For the reasons that follow, we disagree.

In urban areas, automobiles account for approximately seventy percent of carbon monoxide emissions

and forty percent of hydrocarbon emissions.[29] Without inspection and maintenance programs in the States, EPA has concluded, air quality standards cannot be met. All automobiles in the particular area affected must be tested periodically and those vehicles with emissions over a certain level must have corrective work done on them.

Federal controls on vehicle design and manufacture are not in themselves sufficient.[30] Although EPA has authority to order the recall of vehicles that exceed the emission standards in actual use and has in fact required a number of recalls, this authority extends only to vehicles that have been "properly maintained and used" by their owners. Section 207(c).

Over the past few years, EPA has conducted several studies to measure the emissions of automobiles in actual use. Estimates based on the data from these studies indicate that, on average, carbon monoxide and hydrocarbon emissions from 1975 model year vehicles exceed the applicable emission standards the

[29] Shutler, *Overview of Inspection/Maintenance (I/M)*, Proceedings of the Fourth North American Motor Vehicle Emission Control Conference 111 (Nov. 5–7, 1975); see H.R. Rep. No. 91–1146, *supra*, at 6; H.R. Rep. No. 94–1175, 94th Cong., 2d Sess. 208 (1976).

[30] Certification under Section 206(a)(1) of the Clean Air Act requires the testing of prototypes of cars for a new model year to determine whether the design as expressed in the prototype is capable of meeting emission standards prescribed under Section 202. Assembly line testing, which has just been begun under authority of Section 206(b), see 41 Fed. Reg. 31472, determines only whether vehicles coming off the assembly line meet the emission standards.

first year after sale.[31] Available data indicate that there are two major reasons for this disappointing performance: lack of proper maintenance and deliberate disabling of the emission control system.[32]

In 1973, EPA published estimates concluding that total emissions of both hydrocarbons and carbon monoxide could be reduced by between three and

[31] Walsh, *The Need for and Benefits of Inspection and Maintenance of In Use Motor Vehicles* 4–5 and Figs. 3–5 (Nov. 9, 1976) (internal EPA paper endorsed by the agency and distributed to State and local agencies, as well as to interested members of the public, for comment November 29, 1976) (a copy of which we are lodging with the Clerk of the Court). However, California cars, for which separate standards have been established under authority of Section 209 of the Clean Air Act, have performed considerably better. *Id.* at 6 and Fig. 8.

[32] With respect to 1973 vehicles with approximately 15,000 accumulated miles carbon monoxide levels for normally maintained cars are more than 40 percent greater than for those maintained and tuned according to manufacturers' specifications; hydrocarbon levels are about a third higher. Walsh, *supra*, at 5, Figs. 6 and 7. For 1975 vehicles, parallel studies have not been done. However, a sample of "normally maintained" 1975 cars with an average of about 8,000 miles accumulated has been examined. This sample was divided into those cars on which the engine idle CO setting was properly adjusted and those on which it was not. Emissions from the second class were 32 percent greater than those from the first for hydrocarbons and almost twice as high for carbon monoxide. *Id.* at 6, Figs. 6 and 7. Indications are that sensitivity of emissions to idle adjustment may be even greater for 1975 models than for cars from earlier model years.

In addition to the effect of lack of proper maintenance, EPA studies have shown that 20 to 25 percent of 1975 vehicles examined have had emission controls removed or rendered inoperative within one year of initial purchase. *Ibid.* According to EPA studies on cars from earlier model years, "tampering" of this nature increases with vehicle age beyond the first year. *Id.* at 7.

fifteen percent through an inspection and maintenance program.[33] In light of the new information discussed above, EPA is now revising these estimates. A draft of the revised estimates has been provided to EPA regional offices and to selected State and local officials for comment. Although the process of revision is thus in its early stages, and the benefits to be derived from any specific inspection and maintenance program will in any event depend heavily on its individual design and implementation, it is reasonable to predict the potential reduction in emissions as a result of inspection and maintenance will be ultimately listed as approximately 25 to 30 percent for both hydrocarbons and carbon monoxide.[34] Since, as we previously noted, automobiles account for approximately seventy percent of carbon monoxide emissions and approximately forty percent of hydrocarbon emissions in polluted urban areas,[35] hydrocarbon emissions could be reduced by about ten to twelve percent in such an urban area, and carbon monoxide emissions by about eighteen to twenty percent, through an inspection and maintenance program applicable to automobiles alone.[36] In short, the available

[33] 40 C.F.R. Part 51, Appendix N.

[34] Walsh, *supra*, at 18–19.

[35] About an additional 20 percent of total emissions of each of these pollutants is accounted for by mobile sources other than automobiles, such as trucks and motorcycles. These emissions, too, can be reduced by periodic inspection and maintenance. However, no such potential gains have been taken into account in this discussion.

[36] See *Shutler*, note 29, *supra*, at 111.

information demonstrates that the nation will not realize anything approaching a full return on its large and continuing investment in emission controls on new automobiles without implementation of inspection and maintenance programs.

As we noted in our opening brief (p. 50), the costs associated with such a significant reduction in air pollution are small. In States with safety inspection programs it is necessary only to add the emissions testing equipment itself. It has been estimated that a modest fee of only a few dollars per vehicle inspected would cover the costs (A. 427).[37]

Several emissions inspection programs are also in operation in States that do not have safety inspection programs. In Arizona the complete program has been set up through a State contract with a testing firm that acquired the necessary property, constructed the testing facilities, and now operates the program; the major part of the fees collected from motorists ($5.00 per test) go to cover the contractor's costs, not the State's costs directly. The only direct cost to the State has been the administration of the contract.[38] A program in Oregon has also been begun without a safety program as a basis. The per vehicle fee in this program is also $5.00.[39]

[37] See also H.R. Rep. No. 94–1175, *supra*, at 240.

[38] Arizona Revised Statutes 36–1773.A. On January 1, 1977, the State of Arizona's program for the Phoenix-Tucson area became fully mandatory.

[39] Oregon Revised Statutes 468.405 (1975 Repl.).

As to the cost of repairing vehicles that fail, limited data is available from surveys conducted by the Oregon, New Jersey, and

A compulsory inspection and maintenance program has been established by the City of Cincinnati, Ohio.[40] Rhode Island has enacted legislation authorizing a compulsory program to be operated (like the Arizona program) by a private contractor,[40a] and the work of selecting that contractor is well advanced. (In California, a voluntary pilot inspection program in the Riverside area is in operation.) In other States, efforts

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Arizona programs. The New Jersey data show an average repair cost of $33.00 for the 12 percent of cars that failed, with 65 percent of the repairs costing less than the average. The Oregon data show an average repair cost of $18.86 for the 35 percent of cars that failed with 79 percent of the repairs costing less than the average. The Arizona data show an average cost of $25.42 for the 47 percent of cars that failed with 67 percent of the repairs costing less than the average. Walsh, *supra*, at Fig. 11. On the other hand, such repairs will result in an improvement in fuel economy. *Id.* at 21.

[40] Respondents cite (Brief, p. 12 n. 22) the recent suit in *United States* v. *Ohio Department of Highway Safety*, S.D. Ohio, No. C–2–76–835. The circumstances surrounding this action are as follows. EPA promulgated a transportation control plan for the State of Ohio which contained the requirement that an inspection and maintenance program be established and operated in the City of Cincinnati. As part of that program, the State was required to deny registration to non-complying vehicles. The plan was not challenged in a petition for review, and the City of Cincinnati is currently operating an inspection and maintenance program. The State, however, refused to comply with the plan. The Agency sent it a notice of violation (Section 113(a)(1)), held a Section 113(a)(4) conference, and finally issued the State an administrative order, all to no avail. Consequently, the United States initiated suit seeking injunctive relief requiring the State to comply with the provisions of the inspection and maintenance program.

[40a] Chapter 139, Public Laws of 1976 (signed May 26, 1976) (amending Title 31, Chapter 38 of the General Laws of Rhode Island).

along this line are considerably less advanced. EPA believes that the questions raised by these cases regarding the extent of federal authority to compel States to take action have been an important ingredient in this lack of progress.

IV.

RESPONDENTS' ARGUMENTS REGARDING THE BUS PURCHASE REGULATIONS

Respondents argue that the regulations requiring Maryland, Virginia and the District of Columbia to submit statements evidencing financial commitments sufficient to enable the Washington Metropolitan Area Transit Authority (WMATA) to purchase new buses are inconsistent with the WMATA compact and, in any event, are arbitrary or capricious because the purchase of new buses would be ineffective in the absence of strong measures to discourage the use of private vehicles. Upon reconsideration, the EPA Administrator has decided to withdraw the regulations.

These regulations were promulgated three years ago and have, as respondents note, "gone virtually unnoticed in the ensuing years" (Resp. Brief, at 82). In the court of appeals, Maryland and Virginia argued that if they made financial commitments directly to WMATA (as the regulations required, this would violate the WMATA compact (Pet. No. 75–1050, App. 298); the court of appeals disagreed (*ibid.*). Only the Commonwealth of Virginia sought review of that judgment (Pet. No. 75–1050). It argued, as it had

in the court below, that under the terms of the WMATA compact the Commonwealth had no financing responsibility because "on the Virginia side" this was to be done only by local governments and the Northern Virginia Transportation District (Pet. No. 75–1050, p. 12). Our opening brief responded to this argument by noting that Virginia's position was inconsistent with its own transportation plan submitted to EPA for approval, which contemplated the purchase of new buses (Brief, pp. 56–58).

Neither Virginia nor the other affected parties argued in the court of appeals, as they now do for the first time in this Court (Resp. Brief, pp. 83–84), that these regulations would be ineffective as a result of EPA's revocation and Congress' prohibition of certain parking surcharge requirements, which took place long before oral argument below.[41] 39 Fed. Reg. 1848; Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93–319, 88 Stat. 246.

Now that respondents have raised the question, however, the EPA Administrator has reconsidered the technical basis for the regulations and concluded that they are no longer appropriate in the circum-

[41] The District of Columbia alluded briefly to the problem (Brief in No. 74–1013 below, at 32–33) but only as part of its argument that the entire plan for the National Capital Interstate Air Quality Control Region should be remanded to EPA for promulgation of a comprehensive plan for the area (*id.* at 25–34). Although certain regulations were challenged as arbitrary or capricious, the bus-purchase regulations were not among them. *Id.* at 34–46.

stances that prevail. Without parking surcharges or other provisions that will discourage the use of private vehicles, bus purchases will be less effective than originally contemplated. In addition, the advent of subway service in the area may decrease the demand for bus service to some extent, even if other factors induce people to abandon their automobiles.[42] Finally, EPA promulgated such regulations only for the National Capital Metropolitan Area, and did so there primarily because the States had proposed bus purchases in their plans.[43] Now that they have withdrawn their support for the idea, reliance on their original intentions is clearly misplaced.[44] For these reasons, the EPA Administrator has concluded that the regulations should be revoked and will publish notice of

[42] Bus purchases and other mass transit improvements are in themselves incentives to patronage of mass transit, and some measures other than parking surcharges (*e.g.*, exclusive bus lanes) can discourage the use of private vehicles.

[43] See, *e.g.*, A. 596, 606. By the time the bus purchase regulations were promulgated, WMATA had also become committed to expanding its bus fleet as quickly as possible (*id.* at 598, 606), and Virginia had agreed to the feasibility of purchasing 750 buses (or, by implication, the lesser number specified in EPA's regulations) (*id.* at 906).

[44] Although the intent of the regulations is clearly to increase the size of the bus fleet serving the area, they do not explicitly preclude the selling of old buses, as is apparently WMATA's current plan. Resp. Brief, p. 82. In addition, there is no explicit requirement for the use of the new buses to be purchased. Cf. *ibid.* Accordingly, even strict enforcement of the bus purchase regulations would not necessarily achieve the objective of fleet expansion.

their revocation in the Federal Register as rapidly as possible.

However, we should note—as respondents candidly point out—that WMATA has sought a federal grant to finance 80 percent of the cost of 300 new buses to be acquired during fiscal years 1976 and 1977 (Resp. Brief, p. 82). This is precisely the same number of new buses for fiscal years 1976 and 1977 mentioned in the regulations respondents here challenge (see, *e.g.*, 40 C.F.R. 52.2435(e), set forth in our opening brief, at p. 57 n. 66).

CONCLUSION

For the foregoing reasons and those contained in our opening brief, the judgments of the Courts of Appeals for the Ninth and Fourth Circuits should be reversed, and the judgment of the Court of Appeals for the District of Columbia Circuit should be reversed insofar as it prohibits the Administrator from requiring a State to implement necessary transportation control measures, and sustains the regulations requiring the purchase of additional buses, and affirmed in all other respects.

Respectfully submitted.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
V.
EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
V.
STATE OF MARYLAND, ET AL.

RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
V.
DISTRICT OF COLUMBIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

BRIEF FOR AMICUS CURIAE THE CITY OF NEW YORK

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH AND DISTRICT OF COLUMBIA CIRCUITS

BRIEF FOR AMICUS CURIAE THE CITY OF NEW YORK

INTEREST OF THE AMICUS CURIAE

In October, 1974, a coalition of environmental organizations filed suit in the United States District Court for the Southern District of New York to compel The City of New York, under the authority of the Clean Air Act, to implement certain measures to reduce motor vehicle traffic. Friends of the Earth, et al. v. Carey, et al., 74 Civ. 4500, S.D.N.Y., October, 1974. The City has interposed as a defense the same constitutional argument in issue here. By direct appeal and by motion in an earlier appeal, the constitutional question is now pending before the Second Circuit Court of Appeals.

Should the plaintiffs prevail against the City, the consequences for the City's governmental structure would be catastrophic. It is a matter of public knowledge that the City is suffering through a severe fiscal crisis. The measures that plaintiffs would require of the City would necessitate the diversion of scare resources at the expense

of fundamental governmental services. For example, the City's already-depleted police force would be compelled to augment its traffic enforcement and vehicle towaway program, thereby reducing the manpower available for anti-crime activities. Among the other measures that would be required of the City would be the tolling of bridges which connect the City's boroughs; the complete alteration of the pattern of goods deliveries to business and industry; and the elimination of parking facilities in large areas of Manhattan. The City's Mayor has advised the Court, by affidavit, that whatever the merit of those measures in the abstract, implementation at this time would place an undue financial burden upon the City. Nevertheless, the plaintiffs insist upon immediate action, relying upon the allegedly mandatory provisions of the Clean Air Act.

The City is thus vitally interested in the outcome of this litigation. Although the issues in Friends of the Earth v. Carey, supra, have arisen in a somewhat different context (specifically, a State-adopted plan is involved, rather than a federally-imposed plan), this Court's resolution of the cases at bar will have a direct impact upon the City's obligations under the Clean Air Act. Accordingly, the City submits this brief, pursuant to Rule 42(4) of the Court's Rules, as amicus curiae in support of the respondents.

SUMMARY OF ARGUMENT

It is a well-established principle of our federal system that the National Government may not, in the exercise of its authority under the Commerce Clause, control the governmental powers of the States and their subdivisions. The Administrator "concedes"

the point in his brief. Yet the measures that the Administrator would require of the respondents would nevertheless directly affect their police powers and, hence, constitute federal control inconsistent with principles of federalism.

Furthermore, even if the Administrator's requirements did not directly impinge upon the respondents' police powers, the effect of those requirements is to interfere significantly with the decision-making process underlying the utilization and application of those powers. Accordingly, the limit drawn by National League of Cities v. Usery -U.S.-, 44 U.S.L.W. 4974 (No. 74-878, June 24, 1976), is transgressed. The Administrator's argument that the compliance measures at issue are narrow in scope - being directed only at a State's transportation policy - is disingenuous, for it totally ignores the

budgetary and manpower ramifications of compliance and the consequential effect on other vital governmental services.

ARGUMENT

IF, UNDER THE CLEAN AIR ACT, THE ADMINISTRATOR COULD COMPEL THE STATES TO EXERCISE THEIR POLICE POWERS, THE ACT WOULD CONTRAVENE THE TENTH AMENDMENT TO THE CONSTITUTION AND PRINCIPLES INHERENT IN A FEDERAL SYSTEM OF GOVERNMENT.

1. The Tenth Amendment

The Tenth Amendment to the Constitution provides that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Although the Tenth Amendment has sometimes been described as merely stating a "truism" [United States v. Darby, 312 U.S. 100, 124 (1941)], "it is not without significance." Fry v. United States, 421 U.S. 542,

547 n. 7 (1975). Accord, National League of Cities v. Usery, -U.S-., 44 U.S.L.W. 4974, 4976 (No. 74-878, June 24, 1976). Indeed, the history of the Amendment indicates that it embodies a principle of government deemed fundamental to liberty by many of the Framers.

The fear that the National Government would use its powers to destroy the independence of the States, a fear which the Amendment was intended to allay, had been a powerful weapon in the arsenal of those in the State conventions opposing ratification of the Constitution. See, e.g., II Elliot's Debates 60-1, 200, 239, 266-7, 303, 319, 334, 353-56, 377-8, 443-4, 459-61, (1836 ed.); III id. 171, 259, 395, 395-6; IV id. 161, 178-80, 180-1; see also The Federalist, Nos. 43-46; C. Warren, The Making of the Constitution 769 (1937 ed.). Ratification

had, in fact, been accomplished in several of the conventions by very narrow margins and with bitter divisions. And, when Madison introduced in the First Session of Congress his amendment to quell those fears (1 Annals of Congress 441), Rhode Island had still not ratified and North Carolina had already rejected the Constitution.

It should be remembered that prior to the formation of the United States the States were essentially thirteen independent, sovereign powers. The partial surrender of their sovereignty to another government was a novel concept, the implications of which were not at all clear. The Tenth Amendment, then, served as an assurance that the system of government created by the Constitution would be "an indestructible Union composed of indestructible States." Texas v. White, 74 U.S. (7 Wall.) 700, 725 (1868). An

assertion of federal power which ignores the vital role reserved to the States by the Constitution therefore would be repugnant to the basic concept of government held by the Framers.

2. The Sovereign Powers Protected By The Tenth Amendment

Among the governmental powers reserved to the States* and protected by the Tenth Amendment are:

> The right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government....

Veazie Bank v. Fenno, 75 U.S. (8 Wall.) 533, 547 (1869). Such powers are obviously the essence of independent State government and,

*Reference herein to "States" includes their political subdivisions as repositories of State power. See National League of Cities v. Usery, -U.S.- 44, U.S.L.W. 4974, 4980n. 20 (No. 74-878, June 24, 1976).

hence, must be beyond the reach of the powers powers expressly delegated to Congress by the Constitution (in Article I, Section 8). Id.; United States v. Railroad Company, 84 U.S. (17 Wall.) 322, 327-28 (1873); The Federalist, No. 33.

It is true that when a State chooses to exercise its reserved powers to engage in activities otherwise subject to federal regulation, those activities may not escape such regulation merely by virtue of the fact that they are conducted by a State. See, e.g., United States v. California, 297 U.S. 175 (1936); South Carolina v. United States, 199 U.S. 437 (1905). In such cases, however, the State has voluntarily submitted itself to the power of the National Government; it may voluntarily withdraw. Parden v. Terminal Railway, 377 U.S. 184, 192 n. 11 (1964). A converse rule, which extends an immunity from federal

regulation to all State activities, would quickly debilitate the National Government, for the States, clothed with such immunity, could, by enlarging the scope of their activities, block Congress from effectively legislating in many spheres of national concern. See, e.g., Helvering v. Gerhardt, 304 U.S. 405, 417 (1938).

The distinction, then, is that while the National Government may never directly regulate the sovereign functions of State government (e.g., enacting State laws), it is not necessarily precluded from regulating all activities engaged in by States.* This distinction is drawn sharply in New York v. United States, 326 U.S. 572 (1946), which involved the imposition of a federal tax

*See pp. 26-28, infra, for a discussion of when such otherwise proper federal regulation may nevertheless not be applied to State activities.

on the revenues earned by a State agency from the sale of State-owned mineral water. In delivering the judgment of the Court upholding the tax, Justice Frankfurter, in an opinion joined by Justice Rutledge, gave the following reasoning:

> There are, of course, State activities and State-owned property that partake of uniqueness from the point of view of intergovernmental relations.... But so long as Congress generally taps a source of revenue by whomsoever earned and not uniquely capable of being earned only by a State, the Constitution of the United States does not forbid it merely because its incidence also falls on a State.

Id. at 582. (Emphasis added.)

As an example of revenue "uniquely capable of being earned only by a State", Justice Frankfurter noted that only a State could get income from taxation. Id. The National Government could not tax that revenue, for to do so would constitute regulation of a State as a State, since the power to tax

belongs to the State as a sovereign entity. Id.

Chief Justice Stone's concurring opinion, joined by Justices Reed, Murphy and Burton, agreed with Justice Frankfurter that an attempt by the National Government to control or regulate a power uniquely capable of being exercised by a State, i.e., sovereign in character, "would be an unconstitutional exertion of power over a coexisting sovereignty within the same framework of government." Id. at 586. But the Chief Justice felt that, in addition, some instances of federal regulation of even an activity not uniquely a State function could, nevertheless, impair State sovereignty. Id. at 586-90. As an illustration, Chief Justice Stone stated that even a general, nondiscriminatory federal tax on property would be invalid if applied to State-owned property, notwithstanding that

the ownership of property was not uniquely a State activity, because such a tax would interfere with the State's "performance of its functions as a government which the Constitution recognizes as sovereign." Id. at 588.

Chief Justice Stone's reasoning was recently adopted by a majority of this Court in National League of Cities v. Usery, -U.S.-, 44 U.S.L.W. 4974 (No. 74-878, June 24, 1976). The Court held that

> there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner.

Id. at 4977. The dissent in National League of Cities disagreed vigorously that there was any such limitation on the exercise of an otherwise conceded federal power. Id. at 4981. But even the dissent accepted the

narrower view postulated by Justice Frankfurter in New York v. United States that federal regulation could not reach the governmental powers of the States. Thus, Mr. Justice Brennan recognized in his dissenting opinion that federal law could "neither impose policy objectives on the States nor deny the States complete freedom to fix their own objectives." National League of Cities v. Usery, supra, 44 U.S.L.W. at 4986.

3. The National Government May Not Impose Upon The States Decisions Regarding The Conduct Of Government Functions.

Two principles emerge, then, from the decision in National League of Cities v. Usery. First, under no circumstances may Congress regulate directly the governmental powers of the States and their subdivisions. Such powers are not "commerce" within the meaning of Article I, section 8, of the Constitution and, hence, are beyond the ambit of federal

federal authority. National League of Cities v. Usery, supra, 44 U.S.L.W. at 4981-82 (Brennan, J., dissenting). Second, even State activities which do constitute "commerce" may not be regulated by Congress "so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." Id. at 4980.

a) Direct regulation of State governmental powers by the National Government.

In the vast, complex federal system of government existing in the United States, interaction between the powers of the State and National Government is, of course, inevitable. For example, many times the States, in response to action taken by the National Government, exercise their sovereign powers to implement or aid the achievement of national goals adopted by Congress. In such

instances of federal-State interaction, Tenth Amendment considerations become relevant only in the rare event that the line drawn by Justice Cardozo in Steward Machine Co. v. Davis, 301 U.S. 548 (1937), is transgressed by Congress.

That case involved the unemployment compensation provisions of the Social Security Act of 1935 (c. 531, 49 Stat. 620). A federal excise tax was imposed upon certain employers, but a credit against that tax was allowed for taxes paid to an unemployment fund established by State law which, in the judgment of the federal Social Security Board, satisfied federally-prescribed minimum criteria. Petitioner, a business located in Alabama, a State which had passed such a law in response to the federal legislation, challenged the Social Security Act on the ground, inter alia, that it violated the Tenth Amend-

ment and principles implicit in a federal system of government, because the State law was extracted by economic pressure and because Alabama was forced to surrender powers essential to its sovereign existence. Justice Cardozo's seminal discussion of that issue is of critical importance to the instant case because, as we show later, viewed in its light, the constitutional infirmity of petitioner's interpretation of the Act becomes readily discernable.

In rejecting the petitioner's argument, Justice Cardozo observed that to sustain such a challenge there must be established the proposition that the federal law operated as a "[weapon] of coercion, destroying or impairing the autonomy of the states." Id. at 586. Justice Cardozo viewed the "temptation" for the States contained in the federal law - i.e., the prospect of retaining control over

funds that would have otherwise been paid to the National Government by employers - as not akin to the exertion of undue influence or to coercion by the National Government. Id. at 590. A State choosing to join the federal program acted of its "unfettered will." Id.

A crucial factor leading Justice Cardozo to the conclusion that Alabama was participating of its own free will was that the Social Security Act permitted a State, at its pleasure, to repeal its unemployment statute and thereby relieve itself of the obligation of satisfying the federally-prescribed criteria:

> Alabama is still free, without breach of an agreement, to change her system over night. No officer or agency of the National Government can force a compensation law upon her or keep it in existence. No officer or agency of that Government, either by suit or other means, can supervise or control the application of the [unemployment compensation] payments.

Id. at 595. (Emphasis added.) That statement by Justice Cardozo clearly indicates that, had the federal law not preserved free choice by the States, there would have been a conflict with the Tenth Amendment. The rationale is obvious: any abridgement of a State's freedom to choose necessarily is in derogation of its sovereignty, because "freedom is inherent in sovereignty." United States v. Mayo, 319 U.S. 441, 447 (1943).

The salient point, then, is that Congress may involve the States in the enforcement of federal law, so long as the States' freedom of choice remains unrestricted, i.e., the States may be induced, but not compelled, to exercise their sovereign powers. See Oklahoma v. United States Civil Service Commission, 330 U.S. 127, 143 (1947). Congress therefore may not, in the guise of implementing national policy, dictate to the States

laws to be enacted and executive action to be undertaken. Cf. Tarble's Case, 80 U.S. (13 Wall.) 397, 407 (1871). This fundamental principle inherent in a federal system of government is strikingly illustrated by two nineteenth century cases arising under Article IV, Section 2 of the Constitution.

That constitutional provision declares, in pertinent part:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.
>
> No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered upon Claim of the Party to whom such Service or Labour may be due.

After a dispute had arisen between Vir-

ginia and Pennsylvania regarding the extradition to Pennsylvania of a person indicted there for the forcible removal of a fugitive slave to Virginia, Congress enacted legislation regulating the disposition of all fugitives covered by Article IV, Section 2. Act of February 12, 1793, c. 7, 1 Stat. 302. The question then arose in Prigg v. Pennsylvania, 41 U.S. (16 Peters) 539 (1842), whether the federal law could require a State official to enforce the constitutional provision, notwithstanding that no such authority was conferred on the official by State law. Justice Story, writing for the Court, concluded that the federal law constitutionally could not have that effect:

> The clause [Art. IV, Sec. 2, Cl. 3] is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to

> enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution.

Id. at 615-16.

The point was stated even more forcefully by Chief Justice Taney for a unanimous Court in Kentucky v. Dennison, 65 U.S. (24 How.) 66 (1860), a case that involved section 1 of the 1793 legislation, which dealt with the extradition of fugitive criminals. The law provided that, upon the presentation of certain proofs by the State demanding extradition, "it shall be the duty of the executive authority of the state or territory to which such person shall have fled" to deliver him over. Dennison, the Governor of Ohio, had refused to deliver to Kentucky a person charged there with the crime of assisting a slave

to escape, whereupon Kentucky sued in the Supreme Court, on original jurisdiction, for issuance of a mandamus against the Governor.

Chief Justice Taney's discussion of the effect of the fugitive law is a significant indication of the limitations imposed on the National Government by the principles of federalism:

> The words "it shall be the duty," in ordinary legislation, imply the assertion of the power to command and to coerce obedience. But looking to the subject matter of this law, and the relations which the United States and the several States bear to each other, the court is of opinion, the words "it shall be the duty" were not used as mandatory and compulsory, but as declaratory of the moral duty which this compact created, when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the Government of the United States with this power. Indeed, such a

> power would place every State under the control and dominion of the General Government, even in the administration of its internal concerns and reserved rights. And we think it clear, that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State.... [W]e are very far from supposing, that in using ths word "duty", the statesmen who framed and passed the law, or the President who approved and signed it, intended to exercise a coercive power over State officers not warranted by the Constitution.

Id. at 107-8. (Emphasis added.)*

It is noteworthy that Prigg v. Pennsylvania and Kentucky v. Dennison dealt with a provision of the Constitution (Art. IV, Sec. 2) that contains language which seem-

*See Ex parte, Commonwealth of Virginia, 100 U.S. (10 Otto) 339 (1880), a Reconstruction era case involving the Civil Rights Amendments which cites approvingly (id. at 347-8) to Chief Justice Taney's opinion in Dennison.

ingly imposed affirmative duties on the States. Yet this Court, in order to preserve the delicate balance between the State and National Governments in our federal system, strained not to find any authority in the National Government to control the exercise of State power. Any attempt to find such authority in the Commerce Clause, upon which the Clean Air Act is premised, would, then, clearly be violative of the Tenth Amendment and basic principles of federalism; for Article I, Section 8, where the Commerce Clause is found, contains no language even arguably directed at the States, but rather is a limited surrender of power to the National Government.

b) Direct regulation of State activities affecting commerce by the National Government

Moreover, even when a particular State activity is "commerce" within the meaning of

the Commerce Clause, Congress nevertheless may not regulate that activity when to do so would "abrogate the States' otherwise plenary authority" to make policy determinations involving governmental functions essential to the States' separate and independent existence. National League of Cities v. Usery, supra, 44 U.S.L.W. at 4976. Thus, in National League of Cities, the Court held that Congress could not regulate the employment practices of States and their subdivisions, because compliance with the federal requirements would

> significantly alter or displace the States' abilities to structure employer-employee relationships in such areas as fire prevention, police protection, sanitation, public health, and parks and recreation. These activities are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide,

> services such as these which the states have traditionally afforded their citizens. If Congress may withdraw from the states the authority to make those fundamental employment decisions upon which their systems for performance of those functions must rest, we think there would be little left of the states' "separate and independent existence."

Id. at 4979 (footnote omitted; citation omitted). The constitutionality of federal regulation of a particular State activity affecting commerce thus is not determined simply by looking to the nature of the activity itself, but by assessing the impact of the regulation on the entire decision-making system with which the State provides essential governmental services.

4. The Administrator's Position

The Administrator pays lip service to these principles. Thus, conceding that the National Government may only regulate "the State as polluter, not...the State as State"

(Pet. Br.,p. 20), the Administrator indicates to this Court a recognition of the constitutional limits to his powers:

> The Administrator has never asserted any power to compel the State to carry out its governmental responsibilities under an implementation plan by, for example, monitoring ambient air quality and enforcing the emission controls applicable to private stationary sources. Nor does he contend that he can direct the State to adopt laws or regulations creating transportation control plans that comply with the Act (see Pet. No. 1055, App. 27a-29a; Pet. No. 75-909, p. 17, n. 15). He thus concedes the necessity of removing from the regulations all requirements that the States submit legally adopted regulations; the regulations contain no requirement that the State adopt laws.

(Pet. Br., p. 20n. 14.) Despite that statement, however, the Administrator persists in arguing that as "owners and operators of polluting transportation facilities" - i.e., highways - the States are properly subject to federal regulation of their transportation policies (Pet. Br., p. 32).

The logic underlying the Administrator's position is patently flawed. A State's transportation policy is a function of the State as a State, i.e., such a policy is developed and implemented by a State in its constitutional role of a quasi-sovereign possessing certain reserved police powers. The "remedies" which the Administrator seeks to enforce against the respondents - inspection programs and enforcement of traffic laws - accordingly involve actions which can be performed by a State only as sovereign. (Clearly, a private "owner and operator" of a highway has no power to regulate the activities of persons using the road, other than by controlling access.) Quite plainly, the Administrator regards the States as "polluters" solely to support the assertion of federal authority to demand relief from the States as governmental entities.

But the discussion above demonstrates (and the Administrator apparently concedes) that the National Government may not assert its constitutional powers to exercise such control over State Government. Obviously, then, it cannot be enough to pass constitutional scrutiny merely to recite the incantation that the State is being regulated only as a "polluter." The scope of the federal regulation - i.e., the nature of the required State compliance - must likewise be limited to the State as a "polluter", lest such State activities be used - as the Administrator attempts here-as the rationale for an impermissible intrusion of federal authority into an area reserved to State sovereignty.

Furthermore, even assuming that the Administrator's actions did not involve such direct control over State police powers, the

Administrator's application of the Act does not survive scrutiny under this Court's recent holding in National League of Cities v. Usery, supra. The Administrator argues that the Act passes the constitutional test set forth in that decision because the statute: (1) affects only a small portion of a State's transportation policy, and not the full range of fundamental State activities; (2) permits the States to determine the means of compliance; and (3) does not have a significant financial impact (Pet. Br., pp. 47-49). That argument is specious because it ignores the critical interrelationship between transportation policy and other fundamental governmental services. There can be little doubt that in a modern, urbanized area, a public highway system is absolutely essential. Every vital governmental function - police protection, fire prevention,

health care, sanitation, education, etc. - is virtually totally dependent upon that highway system. Nor could such an area long exist as a viable economic unit, providing employment and business for its inhabitants, without its streets and highways. Thus, conforming a State transportation policy to federal requirements would have a significant impact on the process by which States and their subdivisions provide the whole range of fundamental services. (Moreover, although the States are permitted an initial say in fashioning the terms of compliance, all such State proposals are subject to approval and override by the Administrator.)

In the City's case, for example, the plaintiffs in Friends of the Earth v. Carey would require a disposition of police manpower that the Police Commissioner has stated, by affidavit, would affect the Police Depart-

ment's ability to maintain public order and safety. Police officers would be diverted from anticrime activities to parking and traffic enforcement. Another measure demanded by the plaintiffs would require the City, at a time of acute fiscal crisis, to reconstruct many of the highway approaches to the City's bridges in order to permit tolling. These measures, along with many others, have been deemed infeasible at this time by the City's Mayor, who, as the elected executive officer, has determined that basic governmental services must be maintained while the City struggles to regain its financial health. Yet if the Clean Air Act were were construed to support the Administrator's position in these cases, that decision by the Mayor would be superseded by the demands of federal requirements - a clear example of the extent to which local decision-

making regarding essential governmental services would be undermined.*

*Mr. Justice Blackmun's reference to "state facility compliance with imposed federal [environmental] standards" in his concurring opinion in National League of Cities v. Usery, supra, does not weaken the import of the majority decision for this case. A facility directly under State control - e.g., an incinerator - can easily be conformed to federal standards without in any way impairing basic policy determinations by the State. What the Administrator seeks here, however, is to use State jurisdiction over its highway system - an alleged "facility" affecting "commerce" - as a mere pretext for commandeering the entire panoply of State police powers, clearly not the situation envisioned by Mr. Justice Blackmun.

CONCLUSION

The Decisions of the Fourth and Ninth Circuit Courts of Appeals should be affirmed, and the decision of the District of Columbia Circuit Court of Appeals should be reversed insofar as said decision would compel the states to deny vehicle registration, to provide bus lanes and to make financial commitments for the purchase of additional buses.

Dated: New York, New York
December 7, 1976

Respectfully submitted,

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FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 75-909, 75-960, 75-1050 and 75-1055

ENVIRONMENTAL PROTECTION AGENCY, *Petitioner*,

vs.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA, et al., *Respondents*.

ENVIRONMENTAL PROTECTION AGENCY, *Petitioner*,

vs.

STATE OF MARYLAND, et al., *Respondents*.

COMMONWEALTH OF VIRGINIA, ex rel. STATE AIR POLLUTION CONTROL BOARD, *Petitioner*,

vs.

RUSSELL E. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.

RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, *Petitioner*,

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DISTRICT OF COLUMBIA, et al., *Respondents*.

On Writs of Certiorari to the United States Courts of Appeals for the Ninth, Fourth and District of Columbia Circuits

BRIEF OF PACIFIC LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF STATE AND DISTRICT OF COLUMBIA PETITIONERS AND RESPONDENTS

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OPINIONS BELOW

The opinions of the United States Court of Appeals for the Ninth Circuit in *Brown v. Environmental Protection Agency* and *State of Arizona v. Environmental Protection Agency* are reported at 521 F.2d 827 and 521 F.2d 825, respectively. The opinion of the United States Court of Appeals for the Fourth Circuit in *State of Maryland v. Environmental Protection Agency* is reported at 530 F.2d 215. The opinion of the United States Court of Appeals for the District of Columbia Circuit in *District of Columbia v. Train* is reported at 521 F.2d 971.

INTEREST OF AMICUS

Pacific Legal Foundation (hereinafter PLF) is a nonprofit, tax-exempt corporation organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting the public interest. Policy for PLF is set by a Board of Trustees composed of concerned citizens. Twelve of the seventeen-member Board are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. The Board has authorized the filing of this brief *amicus curiae*.

The Environmental Protection Agency (hereinafter EPA) published a transportation control plan for California on November 12, 1973. On December 5, 1973, PLF petitioned the United States Court of

Appeals for the Ninth Circuit to review the plan as well as EPA's enforcement regulation published November 6, 1973. Although more than 200 such petitions for review were filed by public and private entities, PLF was the only petitioner, other than the State of California petitioners, permitted to argue the merits before the court of appeals. *Brown v. Environmental Protection Agency,* 521 F.2d 827, 828 (9th Cir. 1975). That court, however, at the time it issued *Brown,* granted the State of California's motion to sever all non-state petitioners, including PLF.

Such severance notwithstanding, the court of appeals in *Brown* considered issues raised only by PLF, particularly those concerning the constitutional guarantee of a republican form of government. *Brown, supra* at 838, 840. PLF believes that, possibly because of emphasis on other points, these issues may not be fully developed by the parties.

Pursuant to Supreme Court Rule 42, this brief is filed with the written consent of all parties, which consent has been filed with the Clerk of this Court.

ARGUMENT

I

THE TRANSPORTATION CONTROL REGULATIONS VIOLATE THE POLICE POWERS RESERVED TO THE STATES BY THE TENTH AMENDMENT

The Tenth Amendment to the United States Constitution reserves to the states and to the people "[t]he powers not delegated to the United States by

the Constitution, nor prohibited by it to the States." Among the powers reserved to the states by this amendment is the "police power." Because the states existed before the United States Constitution, they possessed the police power long before the adoption of that organic document. *The Mayor, etc., of the City of New York v. Miln,* 36 U.S. (11 Pet.) 102 (1837). A vital part of the police power is the power of the states and their municipalities to regulate the public health and safety.

The United States Supreme Court in *Ambrosini v. United States,* 187 U.S. 1, 6 (1902), in dealing with an Illinois dramshop act noted:

> "The legislation was enacted in the exercise of the police power for the safety, welfare, and health of the community, and it is conceded that that power is a power reserved by the states, free from Federal restriction in any particular material here."

Indeed, the Court there noted:

> "[A]ny government whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government exists only at the mercy of the latter." *Id.* at 7 (citations omitted).

EPA bases its authority to issue these regulations on the power of Congress to regulate interstate commerce. (EPA Br. at 42.) From this, EPA reasons that it may regulate the states in their capacity as owners and operators of polluting transportation facilities. (EPA Br. at 32.) These premises are stretched beyond the breaking point, however, by

EPA's conclusion that it is empowered to regulate not merely direct pollution caused by state facilities, but pollution allegedly resulting from the state's failure to exercise its regulatory (governmental) functions. (EPA Br. at 32-33.)

EPA has thus failed to make the vital distinction of federal regulation of state owned facilities otherwise indistinguishable from similar privately owned facilities and the constitutionally protected governmental functions of the state. In *National League of Cities v. Usery,* 44 U.S.L.W. 4974 (1976), this Court emphasized the distinction in citing *New York v. United States,* 326 U.S. 572, 587-588 (1946):

> "'A State may, like a private individual, own real property and receive income. But in view of our former decisions we could hardly say that a general nondiscriminatory real estate tax (apportioned), or an income tax laid upon citizens and States alike could be constitutionally applied to the State's capitol, its State-house, its public school houses, public parks, or its revenues from taxes or school lands, even though all real property and all income of the citizen is taxed.'" *National League of Cities, supra* at 4976-4977.

This Court then amplified this authority:

> "It is one thing to recognize the authority of Congress to enact laws regulating individual businesses necessarily subject to the dual sovereignty of the government of the Nation and of the State in which they reside. It is quite another to uphold a similar exercise of congressional authority directed not to private citizens, but to the States as States. We have repeatedly recognized that

there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner. . . ." *Id.* at 4977.

The lesson of *National League of Cities* is that the federal government is precluded from infringing on state "functions essential to separate and independent existence," *id.*, not because the Commerce Power does not reach so far, but because the Reserved Powers Clause prohibits it.

Federal regulations which require state officers to propose statutes dictated by a federal agency to a state legislature and, similarly, to adopt federally dictated regulations and budgets must signal the nadir of federal and state comity. Particularly since the "stick" used to impel this end is the incredible language of 40 C.F.R. § 52.23 which threatens state officers with imprisonment and heavy fines for any deviation from the federal dictates.

Standard federal policy has been to require states to pass laws as a prerequisite to the receipt of federal funds. This "power of the purse" has been approved by the United States Supreme Court on several occasions. *See, e.g., Oklahoma v. U.S. Civil Service Commission,* 330 U.S. 127 (1946). Recently, Chief Justice Burger, discussing the applicability to the states of Title IV of the Social Security Act, defined the limits of that power in a concurring opinion:

"[I]t seems appropriate to keep clearly in mind that Title IV of the Social Security Act governs the dispensation of federal funds and that it does no more than that. True, Congress has used the 'power of the purse' to force the States to adhere to its wishes to a certain extent; but adherence to the provisions of Title IV is in no way mandatory upon the States under the Supremacy Clause." *Townsend v. Swank,* 404 U.S. 282, 292 (1971).

In *King v. Smith,* 392 U.S. 309 (1968), Chief Justice Warren also discussed the Aid to Families with Dependent Children provisions of the Social Security Act:

"The AFDC program is based on a scheme of cooperative federalism. . . . It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education and Welfare (HEW) . . . ." 392 U.S. 309, 316-317.

See also Rosado v. Wyman, 397 U.S. 397 (1970).

The portions of the Social Security Act upheld in these cases present incentives to the states which the latter may accept or reject. There is no attempt to impose the federal will on an unwilling state.

The Federal-Aid Highway Act of 1956, 23 U.S.C. §§101, *et seq.*, operates similarly. The states may vol-

untarily accept federal funds for highway construction, but are not required to accept them or to adhere to federal highway standards unless the funds are accepted. These federal laws are valid because of their scrupulous regard for the powers of the states over activities traditionally within the realm of state control.

A state may enact legislation in voluntary response to the federal "power of the purse." But it need not submit to the usurpation of its sovereign powers simply because one federal agency claims to be exercising unlimited regulatory powers granted it by Congress. EPA has overstepped the bounds of state/federal sovereignty, and its regulations must be overturned as violative of the Tenth Amendment.

II

THE REGULATIONS ABRIDGE THE RIGHT OF THE STATES TO THE CONSTITUTIONALLY-GUARANTEED REPUBLICAN FORM OF GOVERNMENT

Article IV, section 4, of the United States Constitution states, "[t]he United States shall guarantee to every State in this Union a Republican Form of Government." The regulations attempt to manipulate state government in such a way as to destroy the functions of that government and render it either a creature of the federal government or a nullity. The regulations purport to force the State of California and its officers to (1) exercise the state's legislative, executive, and judicial power and (2) in some in-

stances refrain from the exercise of such powers. Title 42, United States Code, Section 1857c-5(c), confers upon the Administrator the power to promulgate a state implementation plan; but the Administrator has no power under the Clean Air Act to usurp basic state sovereign power in doing so.

The leading case on point, *Duncan v. McCall,* 139 U.S. 449 (1891), states:

> "By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people *to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies . . . .*" *Id.* at 461 (emphasis added).

The recent case of *Sugarman v. Dougall,* 413 U.S. 634 (1973), noted:

> " 'Each State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen.' Boyd v Thayer, 143 US 135, 161, 36 L Ed 103, 12 S Ct 375 (1892); See Luther v Borden, 7 How 1, 41, 12 L Ed 581 (1849); Pope v Williams, 193 US 621, 632-633, 48 L Ed 817, 24 S Ct 573 (1904). Such power inheres in the State by virtue of its obligation, already noted above, 'to preserve the basic conception of a political community.' Dunn v. Blumstein, 405 US, at 344, 31 L Ed 2d 274. And this power and responsibility of the State applies . . . to persons holding state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in

> the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government. . . ." *Id.* at 647.

The regulatory amendment of state and local statutes and ordinances usurps the constitutional right of Californians to "preserve the basic conception of a political community" and the right to have laws of local effect enacted by representatives selected by and responsible to the local political community.

Some of the regulations issued November 6 and 12, 1973 (including excerpts or summaries of their objectionable parts), which fail under this rationale, are as follows:[1]

I. Section 52.242 which forces the state to establish a program of light-duty vehicle inspection and maintenance. It states in part:

> "(f) The State of California shall submit no later than February 1, 1974, a detailed compliance schedule showing the steps it will take to establish and enforce an inspection and maintenance program pursuant to paragraph (c) of this section, including the text of needed statutory proposals and needed regulations that it will propose for adoption. The compliance schedule shall also include:
>
> "(1) The date by which the State will recommend any needed legislation to the State legislature.
>
> "(2) The date by which necessary equipment will be ordered.

[1]All regulations are cited to Title 40, Code of Federal Regulations.

> "(3) A *signed statement* from the Governor and State Treasurer *identifying the sources and amount of funds for the program. If funds cannot legally be obligated under existing statutory authority, the text of needed legislation shall be submitted.*" (Emphasis added.);

II. Sections 52.243(c) and (f) by which the state must prohibit the use of motorcycles at certain times and during certain months, and must submit to the EPA the text of needed state statutory proposals and regulations needed to implement the motorcycle ban;

III. Section 52.244 by which the state must establish an oxidizing catalyst retrofit program and must submit the text of implementing statutes and regulations that it will propose for adoption;

IV. Section 52.245(a) which provides that "[t]he State of California retrofit program, authorized under § 39176 of the State of California Health and Safety Code . . . shall be extended to the San Joaquin Valley and Sacramento Valley Intrastate Air Quality Control Regions.";

V. Section 52.257 in which the state is forced to establish a computer-aided carpool matching system;

VI. Section 52.258 which forces the City of San Diego to ban automobiles and allow only buses on certain of its streets;

VII. Section 52.259 which forces the state to grant preferential treatment to buses and carpools on named segments of state and interstate highways;

VIII. Section 52.260 which purports to amend, by fiat of the EPA Administrator, a San Diego County air pollution control district regulation;

IX. Sections 52.261 and 52.263 which force the state to establish preferential bus and carpool lanes in the San Francisco Bay Area and Los Angeles regions; and

X. Section 52.23 which threatens state officials with imprisonment and heavy fines for failure to comply in the slightest detail with the federally-imposed controls. If any constitutionally-elected representative of the people of California "fails to timely submit any required compliance schedule, if the compliance schedule when submitted does not contain each of the elements it is required to contain, or if the person or Governmental entity fails to comply with such schedule" by neglecting to propose the EPA dictated statutes and budgets or adopt EPA dictated regulations for the programs demanded by EPA bureaucrats, the draconian penalties are applied. The regulation provides for enforcement action under Section 113 of the Clean Air Act (42 U.S.C. § 1857c-8) which specifies penalties of a fine of $25,000 per

day of violation, or by imprisonment for not more than one year, or by both. These penalties are doubled for subsequent offenses.

Such removal of the legislative and executive powers from the popularly elected government of the States constitutes an abridgement of the right of the people of those States to a republican form of government. Surely, this constitutional guarantee has not been eroded to the point where State officers have become mere rubber stamps and errand boys for omnipotent federal administrative agencies.

Perhaps the most telling argument against this attempt at government by puppetry is the principle of government taking political responsibility for its own actions. Here EPA is attempting to force the States to take steps which may well prove to be politically unpopular. The political repercussions will, however, fall upon the States as the publicly visible enforcing agency and not upon EPA. In a portion of the California Transportation Control Plan not covered by the court of appeals' decision in *Brown* (because it did not require state action or enforcement), EPA proposed to limit the gasoline available to California motorists to the amount needed to attain the air quality standards. 40 C.F.R. § 52.241. In practice, this amounted to a 100 percent reduction throughout almost all of California. *City of Santa Rosa v. United States E. P. Agency,* 534 F.2d 150, 152 (9th Cir. 1976), petition for *certiorari* pending *sub nom. Pacific Legal Foundation v. Environmental Protection Agency,* No. 75-1875. Rather than face the

political consequences of an almost complete prohibition of gasoline in the nation's largest State, EPA revoked the gasoline limitation regulation. 41 Fed. Reg. 45565 (October 15, 1976). That this revocation was a political decision is made clear by the acting Administrator's statement that while the revocation renders the States' Implementation Plans "defective as a legal matter" the benefits of "retaining the gasoline rationing regulations are outweighed by the seriously disruptive social and economic consequences of such regulations." *Id.*

Because this regulation was promulgated by EPA to be enforced by EPA, EPA was able to utilize political considerations in revoking it. The remainder of the State Implementation Plans is designed to require state enforcement. But no matter how politically unpopular these programs may prove, the States are not granted the luxury of revocation exercised by EPA in the instance of gasoline rationing.

The principle of political responsibility for one's acts is basic to our republican form of government. Federal agencies must not be permitted to manipulate unwilling State officers as a political shield against public reaction to controversial programs.

CONCLUSION

For the reasons stated above, Pacific Legal Foundation urges that the decisions of the Courts of Appeals for the Ninth, Fourth and District of Columbia circuits, insofar as they preclude EPA from interference in state governmental functions, be affirmed.

Respectfully submitted,

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December 1976

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-909

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner
v.
EDMUND G. BROWN, GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.

No. 75-960

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner
v.
STATE OF MARYLAND

No. 75-1050

COMMONWEALTH OF VIRGINIA, *ex rel.* STATE AIR POLLUTION CONTROL BOARD,
Petitioner
v.
RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

No. 75-1055

RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY,
Petitioner
v.
DISTRICT OF COLUMBIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH, FOURTH, AND DISTRICT OF COLUMBIA CIRCUITS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
and
BRIEF OF NATURAL RESOURCES DEFENSE COUNCIL, INC., AS AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Natural Resources Defense Council, Inc. (NRDC) hereby respectfully moves for leave to file the attached brief *amicus curiae* in these consolidated cases. Request for consent was made of all parties in these cases. The following parties granted consent: U.S. Environmental Protection Agency (EPA); District of Columbia; Prince William County, Virginia; City of Alexandria, Virginia; the California respondents in No. 75-909; and the petitioners-intervenors in No. 75-1055. The following parties refused consent: the Commonwealth of Virginia; City of Fairfax, Virginia; and the State of Arizona. The State of Maryland did not respond to the request for consent.

The interest of NRDC in these cases arises from its efforts on behalf of its members to promote the development and implementation of air pollution control programs adequate to protect public health and welfare.

NRDC is a national membership organization dedicated to the preservation and defense of the human environment and natural resources of the United States. NRDC's members currently total over 22,000 individuals, residing in all States and territories (excluding American Samoa) of the United States and in several other nations. NRDC is a non-profit corporation organized under the laws of the State of New York, with offices at 15 West 44th Street, New York, New York, 917 15th Street, N.W., Washington, D.C., and 2345 Yale Street Palo Alto, California. Many of NRDC's members live in areas of the United States which routinely experience levels of air pollution harmful to health.

These cases involve a challenge to regulations adopted by EPA to reduce air pollution resulting from the use of motor vehicles. NRDC has been active in promoting this objective since the passage of the Clean Air Amendments of 1970, 84 Stat. 1676, 42 U.S.C. 1857, *et seq.* In 1971 NRDC commented on EPA regulations for the development of State air pollution control plans. In 1972 NRDC reviewed plans submitted by the States and commented to EPA that such plans failed to adequately control motor vehicle air pollution. When EPA approved such inadequate State plans in 1972, NRDC petitioned for judicial review and prevailed in court. *NRDC* v. *EPA* 475 F.2d 968 (D. C. Cir. 1973). To assist citizen participation in the development of State programs to control vehicular air pollution NRDC published in January 1973 a citizen's manual: *Transportation Controls for Clean Air.* When the States submitted plans in 1973 providing for control of motor vehicle air pollution NRDC submitted comments to the States and to EPA. When EPA proposed its regulations for such programs in 1973 NRDC again submitted comments. The regulations under challenge here are a product of this process in which NRDC, on behalf of its members, has had a deep and continuing interest.

In these cases the various parties are asserting the governmental interests of the federal and State components of our constitutional system. NRDC seeks leave to file the attached brief *amicus curiae*, adopting the position and arguments of the petitioners-intervenors in No. 75-1055, in order to present a position which reflects not only the interests of the State and federal governments but also the interests of the people of the United States, in particular, NRDC's individual members, who are exposed to harmful levels of air pollution. These persons are the intended beneficiaries of the Clean Air Act. The outcome of these cases could have a significant effect on their health and welfare.

Respectfully submitted,

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September 10, 1976

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

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BRIEF OF NATURAL RESOURCES DEFENSE COUNCIL, INC., AS AMICUS CURIAE

STATEMENT OF INTEREST

As more fully set forth in the attached motion for leave to file this brief, the Natural Resources Defense Council (NRDC), on behalf of its 22,000 members, has been active in the development of the EPA regulations under challenge in these cases. The State-federal conflict which has developed over these air pollution control regulations has prevented any significant action to reduce vehicular air pollution. As a result, many of NRDC's members residing in the States represented in these cases continued to be exposed to air pollution which is harmful to health. In NRDC's opinion if the EPA action is found unconstitutional, their members and the rest of the people of the United States will be exposed to harmful pollution levels for many more years.

ARGUMENT

In NRDC's opinion EPA's actions are authorized by the Clean Air Act and do not violate the Constitution. NRDC endorses and adopts as its position before this Court the Brief for Petitioners-Intervenors in No. 75-1055, and the argument set forth therein.

The vehicular pollution control programs addressed by EPA's regulations in these cases require significant changes in transportation habits. States have been reluctant to make these changes in the past. NRDC believes that this reluctance will continue unless each State is convinced that other States with similar pollution problems will make equal efforts to clean the air. The actions of the federal government which are challenged in these cases help to assure each State that the necessary efforts will be made by all States with severe pollution problems.

CONCLUSION

NRDC requests this Court to reverse the decisions of the Fourth and Ninth Circuits below and to reverse in part the decision of the D.C. Circuit below.

Respectfully submitted,

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as *amicus curiae*

September 10, 1976

see

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